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RECORD, CASE No. 15,393.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM No., 1009.

THE POSTAL TELEGRAPH CABLE COMPANY, APPELLANT,

vs.

THE CITY COUNCIL OF CHARLESTON, WILLIAM L. CAMPBELL, AND GLEN E. DAVIS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

FILED SEPTEMBER 20, 1893.

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1 *Caption.*

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit. In Equity.

At a circuit court of the United States for the fourth circuit in and for the district of South Carolina, begun and holden at Charleston, in the district aforesaid, on the first Monday in April, 1893, before the Honorable Charles H. Simonton, judge of the United States for the district of South Carolina, holding said circuit court according to the form of the act of Congress in such cases made and provided, the following proceedings were had:

THE POSTAL TELEGRAPH CABLE COMPANY, Complainant,
vs.
THE CITY COUNCIL OF CHARLESTON *et al.*, Defendants.

Be it remembered that heretofore, to wit, on the first day of July, 1892, the said The Postal Telegraph Cable Company, complainant, by its attorneys, Messrs. Mordecai & Gadsden, impleaded the said The City Council of Charleston *et al.*, defendants, in a bill of complaint; which bill is in the words and tenor following:

2 *Bill of Complaint.*

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the United States Circuit —. In Equity.

To the honorable the judges of the circuit — of the United States for the district of South Carolina:

The Postal Telegraph Cable Company, a body corporate under the laws of the State of New York and having its principal place of business in the city of New York, State of New York, brings this its bill against The City Council of Charleston, a municipal corporation created by and under the laws of the State of South Carolina, and William L. Campbell and Glenn E. Davis, all of them citizens of the said State of South Carolina; and thereupon your orator complains and says:

I. That your orator is a telegraph company duly incorporated and organized under the laws of the said State of New York, and was on the 1st day of January, 1892, engaged in and still continues to carry on the business of a telegraph company, having offices in the city of Charleston, in the State of South Carolina, for the purpose of receiving and sending telegraphic messages, and maintaining and operating certain lines of telegraph on the various post roads, public roads, and railroads leading into and from the city of Charles-

ton to the city of Augusta, in the State of Georgia, and to the city of Savannah, in the said last-named State, and other points in other States in the United States and in the Dominion of Canada; and that by its charter it is authorized to construct, maintain, and operate lines of telegraph in and between the various States of the Union, including the State of South
3 Carolina; that your orator is also lessee of the Atlantic Postal Telegraph Cable Company, which was, prior to the said 1st day of January, 1892, and still is, a telegraph company duly incorporated and organized under the laws of the State of New York, and by its charter authorized to construct, maintain, and operate lines of telegraph in and between the various States of the Union and also including the State of South Carolina, and that your orator is also the lessee or owner of many other telegraphic lines which run in, through, and over most of the States and Territories of the United States, including the States of New York, New Jersey, Pennsylvania, Maryland, District of Columbia, North Carolina, South Carolina, Virginia, Alabama, and several of the Western States, and that, as such lessee and owner, your orator is engaged in the general public telegraph business of transmitting messages for commercial purposes by, along, and over its lines in, from, through, and across the State of South Carolina and many other States and Territories of the Union;

And has offices for the receiving and sending of messages by telegraph in each and every State and Territory wherein the lines owned or leased by it extend, and has offices in the city of Charleston, South Carolina, for the general purposes of its business as a telegraph company, from which its poles and wires run and extend over the public streets in the city of Charleston, leading up and along the public road or highway commonly known as Meeting Street road, which is a post road, and through the State of Georgia, passing into the said State of Georgia across the Savannah river between Hamburg, in the State of South Carolina, and Augusta, in the State of Georgia, and also passing into the State of
4 Georgia across the Savannah river, and also passing into other adjoining States at different points.

That on or about the 6th day of March, 1886, said telegraph company duly filed its written acceptance with the Postmaster General of the United States of the restrictions and obligations of the act of Congress entitled "An act to aid in the construction of the telegraph lines and to secure to the Government the use of the same for postal, military, and other purposes," approved July 24th, 1866, *not* title 65 of the United States Revised *States*, relating to the occupancy of post roads of the United States by telegraph lines, and that in pursuance thereof the Postmaster General has designated your orator as one of the telegraph companies that must transmit messages for the United States at a price and rate fixed by the said Postmaster General; that your orator, proceeding thereunder, did construct and now has its lines on the various public roads and post roads of the United States in the State of South Carolina and in the city of Charleston and in all of the

States and Territories into which its lines extend, and in accordance with the authority of said charter and said act of Congress and at the present time, as well as at the times hereinafter referred to, was and still is maintaining and operating said lines of telegraph on the various highways and post roads as aforesaid leading into and through the said city of Charleston across the State of Georgia, North Carolina, and many other States and Territories of the United States, including the States of Georgia, North Carolina, Virginia, District of Columbia, Maryland, Delaware, Pennsylvania, New Jersey, New York, Massachusetts, and other States of
5 the Union, to the city of Chicago, in the State of Illinois, and other Western States beyond.

That the said telegraph lines so running into and through said city of Charleston connect with and extend beyond the termini of said railroads and post roads and other highways, such post roads and rivers making continuous lines of telegraph from the offices of said company in the said city of Charleston, in said State, to, through, and over many of the principal railroads, highways, post roads, and military roads in and of the United States, having offices for the transaction of telegraph business in the various departments of the Government at Washington, in the District of Columbia, and in nearly all of the principal cities, towns, and villages of the United States and Territories thereof; that all the said railroads and highways so leading into and through the said city of Charleston, as well as in the United States, are public highways, and that the daily mails of the United States are regularly carried thereon and delivered therefrom under the authority and by the direction of the Postmaster General, and that said railroads and highways and each of them, as well as the streets of the city of Charleston through which said lines of telegraph run, are post roads of the United States.

That said telegraph lines are also constructed over, under, and across the navigable streams of the United States in the State of South Carolina and in the other States of the Union, but in all cases such lines are so constructed and maintained so as not to obstruct the navigation of said streams and the ordinary travel on said military and post roads.

6 That said telegraph company was before and during the year commencing the 1st day of January, 1892, and now is engaged in the business of receiving and sending telegrams over said lines for the public between its said offices in the city of Charleston and other places in other States and Territories of the United States and to and from foreign countries, and also in sending telegraphic communications between the several departments of the Government of the United States and their offices and agents, giving priority to said official telegraph communications over all other business; and your orator avers that said official telegrams have been and are sent at rates which have been fixed by the Postmaster General annually since the 6th of March, 1886.

And your orator further avers that, by its name and by virtue of the act of incorporation and subject to the Constitution and statute laws of the United States, it was on and previous to the 1st day of

January, 1892, and still is engaged in said telegraph business, for the purpose of interstate commerce and as a governmental agent of the United States of America, operating its lines of telegraph in, upon, and along the post roads of the United States in, through, and over the streets of the city of Charleston, from its offices within the said city of Charleston to those without the State of South Carolina, as hereinbefore set forth.

II. That the City Council of Charleston, defendant herein, is a municipal corporation created by and under the laws of the State of South Carolina, and that the other defendants are its servants and agents, William L. Campbell being treasurer and Glenn E. Davis the sheriff of the said city.

7 That, being so engaged in the business of transmitting telegrams for the purpose of interstate commerce and as a governmental agent of the United States of America, on and previous to the 1st day of January, 1892, as well as now, and having for said purposes offices in the city of Charleston, the defendant The City Council of Charleston, assuming to act under and by virtue of the legislative authority of the General Assembly of the State of South Carolina, undertook to pass and did pass and enact on the — day of December, 1891, an alleged ordinance entitled "An ordinance to regulate licenses for the year 1892," a copy of which ordinance is hereto annexed and marked Exhibit "A," wherein and whereby, among other things, it is provided as follows:

"SECTION 2. Every person, firm, company or corporation required by this ordinance to obtain a license to engage in any trade, business or profession for which a license is required, shall, at the time of applying for such license make a statement and file the same with the city assessor, setting forth:

First, his, her or its name or style, and in case of a firm or company the names of the several persons constituting such firm or company.

Second, the trade, business or profession for which a license is required.

Third, the place where such trade, business or profession is to be carried on.

Fourth, in such cases, where necessary, the amount of business of the previous year, upon which the license shall be assessed; and in cases where the business has not been carried on during the previous year, then the amount of business expected to be car-

8 ried on during the current year, all of which, and answers to questions relative to which shall be given under oath. The city assessor shall thereupon assess the proper license tax as provided for in this ordinance, and shall forthwith deliver the said assessment to the city treasurer, who upon being paid the amount of said assessment, on or before the date named in the first section hereof, shall issue the proper license. Nothing herein contained, shall, in any manner affect any other requirements of law elsewhere enacted in regard to any trade, business or procession.

"SECTION 3. If any person or persons, firm, company or corporation shall exercise or carry on any trade, business or profession for the

exercising, carrying on or doing of which a license is required by this ordinance, without taking out a license as in that behalf required, the said person or persons, firm, company or corporation shall be liable for the payment of the license tax required by this ordinance, and in addition thereto for each and every offence shall be subject to a penalty of 50 per cent. of the amount of such license tax, which tax and penalty shall be recovered as hereinbelow is provided, and if any person or persons, firm, company or corporation shall refuse or neglect to make out and deliver to the assessor on or before the day last named, a statement as required by the 2nd section of this ordinance, or shall make a false statement or shall refuse or neglect to take and subscribe an oath as to the truth of such statement, or any part thereof or from any cause fail to make such statement, or shall fail to take out such license as may be required under this ordinance, the assessor shall proceed to ascertain, as near as may be possible, the business of such person or persons, firm, company or corporation for which he, she or they shall be subject to the payment of a license tax as provided in this ordinance. And for the purposes of such investigation the assessor shall notify the person or persons, firm, company or corporation in default to appear before him, at his office, at a time fixed in said notice, and also such other person or persons as the assessor may desire to examine and the party sought to be charged with the license tax, if he shall attend, together with any witness called as aforesaid, shall be examined by said assessor under oath, (which oath said assessor is authorized to administer) touching the nature and amount of the business of such party, and everything which may tend to evince the true amount of the license tax for which such party shall be liable under this ordinance, and from the information thus acquired by him, or from general reputation, or from his own knowledge of the facts, the assessor shall assess against such person or persons, firm, company or corporation, whether they shall have attended such investigation or not, such license as upon the facts ascertained by him and under the provisions of this ordinance such person or persons, firm, company or corporation is or are required to obtain, adding hereto a penalty of 50 per cent. thereof, and shall turn over such assessment and penalty to the city treasurer to be collected by him, and if the amount of such license tax and penalty shall not be paid within thirty days thereafter, the city treasurer shall issue his execution therefor to the city sheriff, certifying therein the said amount, and the said sheriff shall proceed to collect the said license tax and penalty by distress and sale, or by levy and sale in the same manner as is now provided by law for the collection of other taxes, together with an additional penalty of five per cent. on the whole amount so certified by him, which said five per cent. shall be for the city sheriff as a compensation for making such collection:

Provided, however, that any person or persons, firm, company or corporation so assessed, as aforesaid, shall have the same right of

appeal to the city council from such assessment as now exists by law from assessments of personal property.

Provided further, that in lieu of the remedy, hereinabove in this section, provided to enforce the payment of the license tax and the penalty thereon, suit may be brought in the name of the city council of Charleston, in any court of competent jurisdiction, for the recovery of the said license tax and the penalty or penalties thereon."

And it is further provided by section II of said ordinance as follows:

SEC. II. For a license to carry on any trade, business or profession hereinafter mentioned, within the limits of the city of Charleston, the following sums shall be paid to the city treasurer, who upon receipt of the same, shall issue therefor the proper license as hereinabove provided, viz:

* * * * * * *

35. Telegraph companies or agencies each, for business done exclusively within the city of Charleston, and not including any business done to or from points without the State, and not including any business done for the Government of the United States, its officers or agents, $500.00.

11 That William Aiken Kelly, called city assessor of the said city of Charleston, claiming to act by virtue of said ordinance, sent to your orator through the mails a notice reading as follows:

CITY ASSESSOR'S OFFICE, CITY HALL,
CHARLESTON, S. C., *May 16th*, 1892.

You are hereby notified to appear before me at this office on Thursday, May 26th, 1892, at 12 m., concerning your license tax to do business for this year, for which no license has been taken out by you. Your early attention will save the necessity, under city ordinances, to assess you with penalties added and send case over for execution. Enclosed I hand copy of license ordinance to which I refer.

Very respectfully,
(Signed) WILLIAM AIKEN KELLY,
City Assessor.

To the Postal Telegraph Co., # 13 Broad St.

The original of which notice is hereto annexed and marked Exhibit "B."

That thereafter, on or about the 28th day of May, 1892, the said William Aiken Kelly, claiming to act as city assessor as aforesaid, by virtue of said alleged ordinance, did undertake to assess against your orator a license charge of five hundred dollars, together with a penalty of 5 %, and did turn over said assessment, with the penalty aforesaid, to the defendant The City Treasurer of the City of Charleston to be collected by him; and thereafter, to wit, on

12 the 1st day of July, 1892, the said city treasurer did issue his execution therefor, addressed to Glenn E. Davis, the

city sheriff of the city of Charleston, also defendant herein, certifying therein the same amount of license and penalty charged and requiring the said defendant, Glenn E. Davis, sheriff as aforesaid, to proceed to collect said license tax and penalty by distress and sale or by levy and sale in the same manner as is now provided by law for the collection of other taxes, together with additional penalty of 5%, and that the said defendant, William L. Campbell, city treasurer as aforesaid, having so issued his execution so addressed to the defendant Glenn E. Davis, sheriff as aforesaid, the said Glenn E. Davis has demanded of your orator's manager at Charleston, S. C., said sum of seven hundred and fifty dollars and 5% penalty, and has stated to said manager that unless the same be forthwith paid he will enforce said execution by levy and sale of the property of your said orator.

III. Your orator avers that the said alleged ordinance of the city council of Charleston, entitled "An ordinance to regulate licenses for the year 1892," is in contravention of section 5263 of the Revised Statutes of the United States and in violation of the provisions of section 8, article I, of the Constitution of the United States, and is "*ultra vires*" and void.

IV. Your orator further avers that it is not liable for any license under the provisions of said ordinance, for the further reason that it does not come under the provisions thereof and does not
13 transact the business so made liable to said license under the said ordinance.

That by the terms of the said ordinance the license is attempted to be laid only "for business done exclusively within the city of Charleston;" and your orator shows and alleges that it does no "business exclusively within the city of Charleston;" that it has in the said city offices which are merely initial points for sending telegraphic messages elsewhere, and terminal points for receiving such messages; but that the sending, receiving, and carrying of such messages is a continuous and complete transaction, extending almost instantaneously along its different entire lines and routes from the said *said* city of Charleston to and from different points within and without the State of South Carolina as aforesaid.

And that if license exactions were allowed to and made by the various cities and to and along said routes, the said messages and business would be licensed at every point with manifest injustice and great injury and wrong to your orator.

Your orator further alleges that the complainant pays all the taxes required by law, both to the State of South Carolina, the county of Charleston, and the city of Charleston, upon all its property situated within the city of Charleston, and also upon its gross receipts.

V. That your orator, for the purpose of carrying on its said business of a telegraph company as aforesaid, is the owner of poles, wires, and insulators so erected and placed upon the post roads of the United States within the limits of the city of Charleston,
14 and has and owns in its offices a large number of telegraphic instruments, batteries, and other electrical contrivances

necessary to be used and used for the purpose of carrying on its aforesaid business.

VI. That if the property of your orator should be levied on great and irremediable loss and damage would accrue to your orator, and should it be sold great sacrifice and loss must result therefrom, and that the seizure of the instruments, batteries, and wires of your orator proposed to be levied on, seized, and sold would cause serious and prolonged embarrassment to its business; that much delay must accrue before such poles, wires, batteries, and instruments, if sold, could be replaced, and that it would be difficult, if not impracticable, to ascertain and estimate with even proximate certainty the loss and damages that would result — the complainant from the sale and consequent interruption of its business; that your orator also alleges on information and belief that the defendants William L. Campbell and Glenn E. Davis are men of small and limited means and unable to result in damages in the large amount which would be incurred by your orator; and that the pecuniary value of your orator's loss and damage could not be properly and adequately ascertained by the verdict of a jury, and would far exceed $2,000.00.

VII. Your orator further alleges that there is not money enough in the hands of its manager at Charleston to pay said license charges and the current expenses of said office, and that the profits of the business specified in said office at Charleston have not been, and probably will not be, sufficient to pay said license; your orator further alleges that the levy of said execution and sale thereunder will cause great inconvenience to your orator and to the public by causing delays in hindering the usual operations of the company in the receiving and transmission of messages to and from points outside the city of Charleston; your orator also alleges that the same may subject your orator to numerous lawsuits for damages caused by delays, etc.

VIII. And your orator further avers and shows that in the State of South Carolina, by the decision of its court of last resort, to wit, the supreme court of South Carolina, it has been held and decided that the city council of Charleston is not liable in an action for tort and no such action is maintainable in the courts of said State, and that your orator has therefore no complete and adequate remedy at law; from all which matters and things irreparable loss and damage would accrue to your orator unless protected by this honorable court.

IX. And your orator further avers that such levy and sale, if not enjoined, will prevent your orator from sending telegraphic communications between the several departments of the Government of the United States and so prevent it from performing its contract with the Government of the United States and carrying on its business as the governmental agent of the United States.

X. And your orator further shows unto your honors that it is advised and believes that your orator in law and equity and good conscience ought to be protected from any such wrong and such violation of its rights by the provision of the Constitution of the United States and the acts of Congress of the United States

16 passed in accordance therewith and the settled adjudications of the Supreme Court of the United States construed and applying said provisions to the said Constitution and acts of Congress as aforesaid.

XI. That your orator is remediless in a court of law, and therefore applies and appeals to this honorable court sitting in equity and having peculiar and full power in its behalf and jurisdiction in the premises by virtue of the premises and of the Constitution and laws of the United States.

That all of the said actions and doings of the said defendant are contrary to equity and good conscience and tend to the manifest wrong and injury and oppression of your orator in the premises. To the end, therefore, that your orator, the said The Postal Telegraph Cable Company, may have that relief which it only can obtain in a court of equity, and that the defendants may answer in the premises, and that your honors will declare, decree, and adjudge that the said ordinance of the city of Charleston is "*ultra vires*," unconstitutional, null and void and is not binding upon your orator, and that the said defendant-, The City Council of Charleston, William L. Campbell, and Glenn E. Davis, each and all of them, and all persons acting under them and each and all of them, be *and* forever restrained and enjoined from proceeding under the said execution for the purpose of collecting the said license claim or any part thereof, and that your orator may have such other and further relief as to your honors shall seem meet and proper. May it please — honors

17 to grant unto your orator the writ of subpœna to be directed to the said William L. Campbell and Glenn E. Davis, commanding them at a certain day and under a certain penalty to be and appear before your honors in this honorable court and then and thereto answer the premises (an answer under oath being hereby waived) and to stand to and abide such order and decree herein as your honors shall deem agreeable to equity and good conscience.

MRADECAI & GADSDEN,
Complainant's Attorneys.

18 UNITED STATES OF AMERICA, }
District of South Carolina. }

Personally appeared before me M. S. Harris, who, being duly sworn, says that he is the manager at Charleston, S. C., of The Postal Telegraph Cable Company, complainant herein, which is a body corporate under the laws of the State of New York; that the foregoing bill of complaint is true of his own knowledge except as to those matters and things therein stated to be on information and belief, and as to those he believes them to be true.

M. S. HARRIS, *Manager.*

Sworn to and subscribed before me this 1st day of July, A. D. 1892.

P. H. GADSDEN,
Not. Pub., S. C.

Filed July 1st, 1892.

J. E. HAGOOD,
C. C. C., U. S. Dist., S. C.

19 EXHIBIT "A."

An Ordinance to Regulate Licenses for the Year 1892.

SECTION 1. Be it ordained by the mayor and aldermen of the city of Charleston, in city council assembled: That every person, firm, company or corporation engaged in, or intending to engage in any trade, business or profession hereinafter mentioned, within the limits of the city of Charleston, shall obtain on or before the 20th day of January, A. D. 1892, a license therefor in the manner hereinafter prescribed. Every person, firm, company or corporation commencing business after the said 20th day of January, A. D. 1892, shall in like manner obtain a license therefor before entering upon such trade, business or profession.

SEC. 2. Every person, firm, company or corporation required by this ordinance to obtain a license to engage in any trade, business or profession for which a license is required, shall, at the time of applying for such license make a statement and file the same with the city assessor, setting forth: First—his, her or its name or style, and in case of a firm or company the names of the several persons constituting such firm or company. Second—the trade, business or profession for which a license is required. Third—the place where such trade, business or profession is to be carried on. Fourth—in such cases, where necessary, the amount of business of the previous year, upon which amount the license shall be assessed; and in cases where the business has not been carried on during the previous year, then the amount of business expected to be carried on during the current year, all of which, and answers to questions relative to which, shall be given under oath. The city assessor shall thereupon assess the proper license tax as provided for in this ordinance, and shall forthwith deliver the said assessment to the city treasurer, who, upon being paid the amount of said assessment, on or before the date named in the first section hereof, shall issue the proper license. Nothing herein contained shall, in any manner affect any other requirements of law elsewhere enacted in regard to any trade, business or profession.

SEC. 3. If any person or persons, firm, company or corporation shall exercise or carry on any trade, business or profession for the exercising, carrying on or doing of which a license is required by this ordinance, without taking out a license as in that behalf required, the said person or persons, firm, company or corporation shall be liable for the payment of the license tax required by this ordinance,
20 and in addition thereto for each and every offence shall be subject to a penalty of 50 per cent. of the amount of such license tax, which tax and penalty shall be recovered as herein below is provided, and if any person or persons, firm, company or corporation shall refuse or neglect to make out and deliver to the assessor on or before the day last named a statement as required by the 2nd section of this ordinance, or shall make a false statement, or shall refuse or neglect to take and subscribe an oath as to the

truth of such statement, or any part thereof, or from any cause shall fail to make such statement, or shall fail to take out such license as may be required under this ordinance, the assessor shall proceed to ascertain, as near as may be possible, the business of such person or persons, firm, company or corporation for which he, she or they shall be subject to the payment of a license tax as provided in this ordinance. And for the purposes of such investigation the assessor shall notify the person or persons, firm, company or corporation in default to appear before him, at his office, at a time fixed in said notice, and also such other person or persons as the assessor may desire to examine, and the party sought to be charged with the license tax, if he shall attend, together with any witness called as aforesaid, shall be examined by said assessor under oath, (which oath said assessor is authorized to administer,) touching the nature and amount of the business of such party, and everything which may tend to evince the true amount of the license tax for which such party shall be liable under this ordinance, and from the information thus acquired by him, or from general reputation, or from his own knowledge of the facts, the assessor shall assess against such person or persons, firm, company or corporation, whether they shall have attended such investigation or not, such license as upon the facts ascertained by him and under the provisions of this ordinance such person or persons, firm, company or corporation is or are required to obtain, adding hereto a penalty of 50 per cent. thereof, and shall turn over such assessment and penalty to the city treasurer to be collected by him, and if the amount of such license tax and penalty shall not be paid within thirty days thereafter the city treasurer shall issue his execution therefor to the city sheriff, certifying therein the said amount, and the said sheriff shall proceed to collect the said license tax and penalty by distress and sale, or by levy and sale in the same manner as is now provided by law for the collection of other taxes, together with an additional penalty of five per cent. on the whole amount so certified to him, which said 5 per cent. shall be for the city sheriff as a compensation for making such collection: Provided, however, that any person or persons, firm, company or corporation so assessed, as aforesaid, shall have the same right of appeal to the city council from such assessment as now exists by law from assessments of personal property.

Provided further, that in lieu of the remedy, hereinabove in this section, provided to enforce the payment of the license tax
21 and the penalty thereon, suit may be brought in the name of the city council of Charleston, in any court of competent jurisdiction, for the recovery of the said license tax and the penalty or penalties thereon.

SEC. 4. The license granted under this ordinance shall not authorize the person or persons (except lawyers, physicians, dentists and auctioneers) or firm, company or corporation mentioned therein, to exercise or carry on the trade, business or profession specified in such license in any other place than that mentioned therein; and every person, firm, company or corporation exercising or carrying on any trade, business or profession, or doing any act for which a

license is required, shall keep said license at all times of business, in a conspicuous part of the business place, and on demand of any authorized official of the city government shall produce such license, and unless he shall do so shall be deemed to have no license. It shall be the duty of the city sheriff, through his deputies and the police, to detect and report all parties failing to take out a license as herein required. They shall visit each and every place of business after the 20th day of January, 1892, and ascertain and report to the city assessor the names and places of business of all persons failing to take out a license. Any officer or person failing to discharge his duty as laid down in this ordinance shall be reported to council for their action.

SEC. 5. Upon the removal of any licensee from the house or premises at which the trade, business or profession mentioned in the license was authorized, it may and shall be lawful for the city treasurer, by endorsement upon such license, to authorize the said licensee removing as aforesaid to any other place to carry on the trade, business or profession specified in such license at the place to which such licensee may have removed.

SEC. 6. No exempt card shall in future be issued. All persons whose stock shall not exceed $100 in value shall be permitted to take out a vendor's card upon payment of $5.

SEC. 7. All licenses granted under this ordinance shall continue in force until the 31st day of December, A. D. 1892, except such as are provided for by limitation, *per diem* or month. The city treasurer shall prepare a proper form to be issued in each case.

SECTION 8. It shall be the duty of the city treasurer to cause to be made a metal badge, suitably inscribed, the design and numerals thereon to be cut in such an effective way as will prevent imitation, and supply the same to all persons taking out a license for a vehicle, cart, (including farm carts), dray, hack or wagon, for the year 1892, and it shall be the duty of all persons taking out said license to securely affix said badge to the blind of the bridle on the right-hand side, or some conspicuous place on the right-hand side of the vehicle; and should at any time this license badge be not found so secured and displayed in the place herein designated, the owner thereof shall be liable to a penalty of $5 for each and every such neglect. It will not be obligatory on the owner of
22 public carriages, coaches or omnibusses to affix the badge as required by this ordinance, but in lieu thereof the drivers of said carriages, coaches or omnibusses shall at all times be prepared to exhibit said badge when demanded by an authorized officer of the city government, and upon the failure to produce said badge when so demanded the owner of all such public vehicles shall be liable to a fine of $15 for each and every such failure. There shall be kept at the treasurer's office a special list of all such license badges, showing the number of said badge and the name of the person to whom it had been issued; and no badge so issued and recorded shall be transferred except as prescribed for all other licenses.

SECTION 9. Application for licenses of all kinds shall be made at the city assessor's office.

SECTION 10. Applications for transfers of licenses shall be made in writing to the city treasurer, referred by him to the committee on ways and means, and if favorably reported on by them shall be authorized by the mayor.

SECTION 11. For a license to carry on any trade, business or profession hereinafter mentioned, within the limits of the city of Charleston, the following sums shall be paid to the city treasurer, who, upon receipt of the same, shall issue therefor the proper license, as hereinabove provided, viz:

Class 1.

Agencies or companies, each.

1.	Academy of music, theatre or opera house	$200 00
2.	Bagging manufacturing companies, each	500 00
3.	Banks, State or savings, each	250 00
4.	Breweries or agencies of breweries, each	100 00
5.	Building and loan associations, each	25 00
6.	Cotton manufacturing companies, each	500 00
7.	Cotton-seed oil manufacturing companies, each	50 00
8.	Dredging companies, each	50 00
9.	Express companies or agencies, each	500 00
10.	Electric light companies, each	500 00
11.	Oil refineries, each	50 00
12.	Ferry (other than steam) companies or agencies, each	10 00
13.	Forwarding agencies or companies, each	25 00
14.	Gold or stock telegraph companies or agencies, each (for business done within the limits of the city)	200 00
15.	Gas companies, each	500 00
16.	Insurance companies or agencies, whose business is less than $1,000, each	20 00
	For each additional $1,000 or fractional part of $1,000 of business, each	10 00
23	17. Jockey clubs, each	100 00
	18. Marl or lime mining or manufacturing companies or agencies, each	100 00
19.	Mercantile agencies—Dun, Bradstreet's and others, each	150 00
20.	Phosphate rock mining or manufacturing companies, or agencies, each; also fertilizer companies or agencies, each	500 00
21.	Railroad companies, each	500 00
22.	Railroad ticket agencies, being all persons buying or selling railroad tickets other than authorized agents of railroad companies, each	500 00
23.	Rent agencies or collectors of rents or other claims, each	25 00
24.	Steamship (regular lines) agencies or companies, each	250 00
25.	Steam ferry-boat agencies or companies, each	100 00
26.	Steam cotton press, where one is located and worked, each	200 00

27. Steam cotton press, where more than one is located and worked, each..... $300 00
28. Steamboat companies or agencies, for each steamboat. 50 00
29. Steam or other lightering companies or agencies, each 200 00
30. Steamship (other than regular lines) companies or agencies, each..... 150 00
31. Steamship (other than regular line-) and sailing vessels combined, companies or agencies, each..... 150 00
32. Sailing vessel companies or agencies, each..... 50 00
33. Street railway companies, each..... 500 00
34. Telephone companies or agencies, each..... 500 00
35. Telegraph companies or agencies, each, for business done exclusively within the city of Charleston and not including any business done to or from points without the State, and not including any business done for the Government of the United States, its officers or agents..... 500 00
36. Terminal warehouse companies or agencies, each.... 500 00
37. Water-works companies, each..... 100 00
38. Oil, creosote or fernoline companies, each..... 100 00
39. Kerosene oil companies or agencies, each..... 500 00
40. Sleeping car companies or agencies, each..... 100 00
41. Agencies of steam bakeries or cracker factories, each.. 60 00
42. Lead companies. Those rolling lead or erecting lead acid chambers, each..... 100 00

Class 2.

1. Auctioneers, real estate brokers; brokers of stocks, bonds and other personal property at auction or private sale, each..... $75 00

Class 3.

1. Artists, ambrotypists, daguerrean or photographists, each..... $25 00

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Class 4.

1. Architects, civil engineers or surveyors, each..... $25 00

Class 5.

1. Brokers, pawn, each..... $300 00
2. Brokers, stock, and other personal property and real estate at private sale, each..... 75 00
3. Brokers, ship..... 50 00
4. Brokers, street..... 50 00
5. Brokers, dealing in chemicals, fertilizer materials, etc. 50 00

Class 6.

1. Bankers, who are all persons or firms other than banks, buying and selling domestic or foreign exchange, or discounting notes or other evidence of debt, each.. $150 00

Class 7.

1. Billiard or pool tables—for each table	$25 00
2. Bowling alleys—for each alley	30 00
3. Bagatelle tables, each	10 00

Class 8.

Boarding-houses or hotels.

1. Sailor, each	$50 00
2. Other than sailor, having less than 10 rooms, each	10 00
3. Other than sailor, having 10 and less than 20 rooms, each	30 00
4. Other than sailor, having 20 and less than 50 rooms, each	50 00
5. Other than sailor, having 50 and less than 100 rooms, each	75 00
6. Those having over 100 rooms, each	100 00

Class 9.

1. Bakeries, steam, each	$60 00
2. Bakeries, other than steam, each	25 00

Class 10.

1. Barbers, for each chair	$2 50

Class 11.

1. Bill-posters and distributors, each	$40 00

Class 12.

1. Butchers, for each stall	$5 00

25

Class 13.

Builders, master mechanics and workmen of all trades and employments not specially named elsewhere.

1. Those employing not over ten hands, each	$25 00
2. Those employing over ten hands, each	50 00
3. Engravers, each	10 00

Class 14.

1. Cotton presses, worked by hand, each	$35 00
2. Cotton packing by hand, each	35 00
3. Cotton gins, each	35 00

Class 15.

1. Circuses, each	$500 00

Class 16.

1. Cook shops, each	$10 00

Class 17.

1. Ship-yards, marine or slips	$50 00
2. Dry docks, each	50 00

Class 18.

1. Owners of steam-tugs, for each tug	$25 00

Class 19.

1. Dye-houses, each	$10 00

Class 20.

Dealers who are all persons, firms or companies, buying or selling any articles of trade or merchandise.

1. Dealers in fresh meats (sold elsewhere than in the market) or green grocer on production of receipt for one year's rent of stall in the market, in advance, each.	$100 00
2. Other dealers in fresh meats sold elsewhere than in the market and not green grocers, and who are not required under the provisions of this ordinance to take out any other license	$100 00

26 Class 21.

Dealers in upland cotton or rice in tierces, or its equivalent in barrels.

1. Those buying or selling less than 5,000 packages, each	$100 00
2. Those buying or selling 5,000 packages and less than 8,000 packages, each	200 00
3. Those buying or selling 8,000 packages and less than 15,000 packages, each	300 00
4. Those buying or selling 15,000 packages and less than 20,000 packages, each	350 00
5. Those buying or selling 20,000 packages and less than 30,000 packages, each	400 00
6. Those buying or selling 30,000 packages or more, each	500 00

Class 22.

Dealers in sea island cotton or long staple cotton.

1. Those buying or selling less than 1,000 packages, each	$50 00
2. Those buying or selling 1,000 packages and less than 2,500 packages, each	100 00
3. Those buying or selling 2,500 packages and less than 4,000 packages, each	200 00
4. Those buying or selling over 4,000 packages, each	300 00

Class 23.

1. Cotton pickeries or buyers and packers of loose cotton, each $50 00

Class 24.

1. Dealers in sewing machines, each $50 00

Class 25.

Importers and dealers in fertilizers, cotton-seed meal, kainit, guano, phosphate rock, marl, lime, and all or any other like articles used or sold as fertilizers, or which are used for manufacturing fertilizers.

1. Those selling not over 1,000 tons, each $50 00
2. Those selling not over 5,000 tons, each 250 00
3. Those selling over 5,000 tons, each 500 00

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Class 26.

Dealers in liquor, wholesale and retail.

1. Retail liquor or bar-rooms, each $100 00
2. Dealers whose sales do not exceed $20,000, each 150 00
3. Dealers whose sales exceed $20,000, for each additional $1,000 ..... 2 00
4. Bottlers of beer and ale, or agencies, each 50 00

Class 27.

1. Dealers in books and pictures on streets, or canvassers for same $12 00

Class 28.

1. Dealers in horses and mules, each $50 00
2. Cattle yards, sale or stock yards, each 100 00
3. Commission, feed and sale stables, for horses or mules 75 00

Class 29.

1. Dealers whose stock never exceeds in value the sum of $100 each $5 00

Class 30.

Dealers in naval stores.

1. Those buying or selling not over 15,000 packages, each $100 00
2. Those buying or selling not over 20,000 packages, each 150 00
3. Those buying or selling not over 25,000 packages, each 200 00
4. Those buying or selling not over 30,000 packages, each 250 00
5. Those buying or selling over 30,000 packages, each .. 300 00

Class 31.

1. Dealers in fruits or peanuts, with stand on street, each	$20 00
2. Dealers in hides and tallow, furs and wool, each	50 00
3. Dealers in ice, oil, coal, etc., from carts or wagons on streets, for each cart or wagon, exclusive of cart license	10 00
4. Dealers in ice, from branch ice-house, each	10 00
5. Dealers in ice or ice-house, each	100 00
6. Dealers in ice cream or ice-cream saloons	15 00
7. Dealers in junk, wholesale, each	125 00
8. Dealers in junk, retail, each	30 00
9. Dealers, peddling goods around the city, per week, each	5 00
10. Dealers in soda water sold from founts, and milk shakes, each	10 00
11. Dealers in poultry, fish, vegetables or fruit on street, per month, each	2 00
12. Dealers in poultry, fish, vegetables, fruit, in market, each	5 00
13. Dealers, retail, in second-hand clothing only	35 00
14. Dealers, wholesale, in second-hand clothing	75 00

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Class 32.

1. Dealers in coal or coal yards, and all importers of coal (except such as is imported directly by officials of mechanical, manufacturing or industrial enterprises for use of such establishments) and all persons selling coal from wharves or vessels shall be deemed liable to a coal-yard license, each	$50 00
2. Dealers, commercial brokers, who sell only on brokerage, or on commission here, each broker or recognized firm of brokers not exceeding two members	50 00
And for each additional member of such a firm, exceeding two	50 00

Class 33.

Dealers in poultry and country produce and in any and every other article of trade or merchandise not specially named elsewhere in this ordinance, whose annual sales—

1. Do not exceed $2,000, each	$15 00
2. Whose annual sales are over $2,000 and less than $5,000, each	25 00
3. Those whose annual sales are over $5,000 and less than $10,000, each	30 00
4. Those whose annual sales are over $10,000 and less than $15,000, each	40 00
5. Those whose annual sales are over $15,000 and less than $20,000, each	50 00

6. Those whose annual sales are over $20,000 and less than $30,000, each	$60 00
7. Those whose annual sales are over $30,000 and less than $50,000, each	80 00
8. Those whose annual sales exceed $50,000, for each additional $1,000	1 00

Class 34.

1. Fairs, promenade concerts, parties, public balls, glass-blowing, operas, minstrels, panoramas, and every other kind of public entertainment of a like nature, per day or night, each	$5 00

Class 35.

1. Founderies and machine shops whose gross business does not exceed $75,000	$75 00
2. Those whose gross business does not exceed $100,000	100 00
3. Those whose gross business exceeds $100,000	150 00

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Class 36.

Factories.

1. Axle-grease factories, each	$5 00
2. Basket and willow-ware factories, each	5 00
3. Bag (other than paper) factories, each	50 00
4. Bag (paper) factories, each	5 00
5. Barrel factories, each	50 00
6. Cigar factories, each	10 00
7. Concrete piping factories, each	10 00
8. Candy factories, each	15 00
9. Cotton tie factories, each	10 00
10. Cotton tie buckle factories, each	10 00
11. Clothing factories, each	15 00
12. Harness factories, each	15 00
13. Mattress factories, each	15 00
14. Shirts and other underwear factories, each	15 00
15. Sausage (by steam) factories, each	15 00
16. Sausage (by hand) factories, each	5 00
17. Sash and blind factories, each	40 00
18. Soap and candle factories, each	15 00
19. Soda water factories and bottlers of soda water, each	25 00
20. Furniture factories, each	25 00
21. Factories canning vegetables, fruits, fish or oysters, each	10 00

Class 37.

I. Gas-fitters and plumbers, each	$25 00

Class 38.

1. Intelligence office, or shipping master, each	$25 00
2. Information or employment bureaus, each	25 00

Class 39.

1. Laundries, steam, each	$50 00
2. Laundries, washing and ironing houses, each	25 00

Class 40.

1. Lumber yards, lumber ponds, each	$60 00

Class 41.

Lawyers, physicians, dentists, chemists.

1. Whose gross business does not exceed $600, each	$10 00
2. Whose gross business does not exceed $1,000, each	25 00
3. Whose gross business does not exceed $3,000, each	50 00
4. Whose gross business does not exceed $5,000, each	75 00
5. Whose gross business exceeds $5,000, each	100 00
6. Veterinary surgeons, each	20 00

30 Class 42.

1. Marble yards, each	$20 00

Class 43.

1. Mills, flour, each	$50 00
2. Mills, grist, steam, each	30 00
3. Mills, grist, horse power, each	10 00
4. Mills, planing, each	50 00
5. Mills, saw, each	50 00
6. Mills, rice, doing a business of 2,000 tierces and under, each	50 00
7. Mills, rice, doing a business of 5,000 tierces and under, each	100 00
8. Mills, rice, those doing a business of 10,000 tierces and under, each	250 00
9. Mills, rice, those doing a business of 15,000 tierces and under, each	400 00
10. Mills, rice, those doing a business of over 15,000 tierces, each	500 00
11. Mills, spice or coffee, sea foam, self-raising or prepared flours, as special business, each	20 00

Class 44.

1. Papers, daily, worked by steam, gas or water power, each	$150 00
2. Papers, weekly, worked by gas, steam or water power, each	50 00

3. Papers, worked by hand, each	$25 00
4. Publishers, other than papers, each	100 00
5. Printing offices, job, steam, gas or water power, each	50 00
6. Printing offices, job, hand, each	15 00

Class 45.

1. Restaurants, each	$30 00

Class 46.

1. Shooting galleries, skating rinks, each	$25 00

Class 47.

1. Stables, public or livery, each	$30 00

Class 48.

1. Stevedores, each	$50 00

Class 49.

1. Tailors, merchant, each	$50 00
2. Tailor shops, not merchants	5 00

Class 50.

1. Undertakers, whose business does not exceed $1,000	$25 00
2. Undertakers, whose business does not exceed $2,000, each	50 00
3. Undertakers, whose business exceeds $2,000, each	100 00

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Class 51.

Vehicles, carts, used for business purposes, (including farm and phosphate carts,) trucks or wagons, drays, hacks.

1. Drawn by one horse, each	$10 00
2. Drawn by two horses, each	20 00
3. Coaches, omnibuses, drawn by two horses, each	30 00
4. Buggies and carriages, drawn by one horse, each	10 00
5. Buggies and carriages, drawn by two horses, each	20 00

Class 52.

1. Wood-sawyers, machinery, each	$30 00

Class 53.

Warehousemen and wharfmen, who are all persons, firms, or companies receiving any article of trade or merchandise on storage, either on wharves, wharf warehouses, buildings or stores, in any part of the city, or who have piers or wharves used for landing or shipping of goods from vessels.

1. Whose gross receipts do not exceed $5,000, each	$75 00
2. Whose gross receipts do not exceed $10,000, each	100 00
3. Whose gross receipts do not exceed $20,000, each	150 00
4. Whose gross receipts exceed $20,000, each	200 00

Class 54.

Wheelwright and blacksmith shops.

1. Wheelwright, one forge, each	$10 00
2. Wheelwright shops, for each additional forge	5 00
3. Blacksmith shops, one forge each	10 00
4. Blacksmith shops, for each additional forge	5 00
5. Coach, carriage and buggy makers, and repairers	25 00

Class 55.

1. Wood yards (all parties having paid for wood-yard licenses and licenses for carts shall have the privilege of offering wood for sale on the streets without the addition of a huckster's license, provided, however, the names of the owners of such carts be painted thereon), each	$30 00

32 SECTION 12. That wherever in this ordinance the term dealer is used, the same shall include not only the principal, but in his, her or their absence shall include any agent, clerk or employee managing the business respectively referred to; and generally where a license is herein imposed for the carrying on of any business, and the same is carried on by any agent, clerk or employee, such agent, clerk or employee shall be subject to the penalties herein imposed, should the said business be carried on without taking out such license in the same manner as if he, she or they was or were the proprietor or proprietors of the said business.

SECTION 13. That the charge for license for any business, trade or profession not enumerated above shall be determined on by the committee on ways and means and the city assessor conjointly.

SECTION 14. That in all cases of mining or manufacturing companies which carry on the business of mining or manufacturing without the limits of the city, and which carry on within the limits of the city a trade or business in the materials used in manufacturing or in the products so mined or manufactured by them, the license imposed upon said companies in this ordinance is intended to relate exclusively to the business carried on by them within the limits of the city of Charleston as aforesaid.

SECTION 15. That all ordinances and parts of ordinances inconsistent herewith be, and the same are hereby, repealed.

Filed 1st July, 1892.

33 EXHIBIT "B."

CITY ASSESSOR'S OFFICE, CITY HALL,
CHARLESTON, S. C., *May 16th*, 1892.

You are hereby required to appear before me at this office on Thursday, the 26th May, 1892, at 12 m., concerning your license tax to do business for this year, for which no license has been taken out.

Your early attention will save the necessity under city ordinances to assess you with penalties added and send case over for execution.

Enclosed I hand copy of licensed ordinance to which I refer.

Very respectfully, WM. AIKEN KELLY,
City Assessor.

To Postal Telegraph Company, #13 Broad street.

Filed 1st July, 1892.

34 *Subpœna.*

UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit.

The President of the United States of America to The City Council of Charleston, a municipal corporation created by and under the laws of the State of South Carolina, and William L. Campbell and Glenn E. Davis, all of them citizens of the said State of South Carolina:

You are hereby strictly commanded and firmly enjoined that, all manner of excuses being laid aside, you be and appear before the judges of the circuit court of the United States for the district of South Carolina, at Charleston, on the 1st day of August, 1892, twenty days after the service thereof, then and there true and perfect answer to make, upon your corporal oath on the Holy Evangelists, to all such matters as shall be objected against you in the bill of complaint of The Postal Cable Company, a body corporate under the laws of the State of New York and having its principal place of business in the city of New York, State of New York.

And also that you do, on the rules day next immediately after the day appointed and expressed, file or cause to be filed in the registry of said court your plea, answer, or demurrer to the said bill of complaint.

Hereof fail not under the pain of one hundred pounds.

Given under the seal of the said court.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States of America, at Charleston, in South Carolina, district aforesaid, the 1st day of July, in the year of our Lord one thousand eight hundred and ninety-two, and in the one hundred and sixteenth year of the sovereignty and Independence of the United States of America.

35 MORDECAI & GADSDEN,
Complainant's Solicitors.

Memorandum.

The defendants will take notice that they are required to enter their appearance in this suit in the clerk's office of the circuit court of the United States for the district of South Carolina on or before the first Monday of August, 1892; otherwise the bill will be taken *pro confesso* against them.

J. E. HAGOOD,
[SEAL.] *C. C. C. U. S., Dist. S. C.*

Marshal's Return.

Personally appeared H. W. Hendricks, chief deputy U. S. marshal, — sworn, says that he personally served, at Charleston, S. C., Hon. J. F. Ficken, mayor of the city of Charleston; J. Orrin Lea, chief clerk of W. L. Campbell, city treasurer, and Glenn E. Davis, city sheriff of Charleston, S. C., on 1st day of July, 1892.

H. W. HENDRICKS,
Chief Dep'ty U. S. Marshal.

Sworn to before me this 2nd day of July, A. D. 1892.

J. WESLEY SMITH,
U. S. Comm'r.

Entered in docket civil cases, folio 186, July 1st, 1892.

G. I. CUNNINGHAM,
U. S. Marshal.

Filed 1st July, 1892.

36 *Injunction Order.*

UNITED STATES OF AMERICA, }
District of South Carolina. }

In the United States Circuit Court, Fourth Circuit. In Equity.

THE POSTAL TELEGRAPH CABLE COMPANY
against
THE CITY COUNCIL OF CHARLESTON and Others. } Restraining Order.

On hearing the sworn bill of complaint herein this day filed, and it appearing therefrom that the complainant above named has *has* prayed for an injunction against the defendants hereinafter named, and it also appearing that there is danger of irreparable injury to said complainant from delay to grant such injunction, and it further appearing that the facts stated in the said bill are sufficient to warrant the granting of a restraining order until there can be a decision on a motion for a temporary injunction:

Now, therefore, in order to prevent such injury, it is ordered:

1. That the marshal of the United States for the district of South Carolina or his deputy do serve a copy of this order and of this notice annexed hereto upon the several defendants herein named.

2. That the defendants, The City Council of Charleston, William L. Campbell, and Glenn E. Davis, and their deputies, agents, attorneys, and employees, be and each and every of them are hereby restrained from issuing or levying any executions or other process against or upon the property of the complainant, The Postal Telegraph Cable Company, for the purpose of collecting any licenses, costs, or penalties under the alleged license ordinance of the said city of Charleston for the year 1892, as set out in the said bill of complaint in this cause, and from seizing, holding, taking possession

of, or selling any or every part of the property of said defend ant.

37 3. This order shall remain of force until the hearing and decisions of said motion for a temporary injunction.

4. That the complainant do within ten days from the date of this order file a bond, with sufficient security, to be approved by one of the United States judges of any circuit or district court of the United States, in the penalty of one thousand dollars, payable to the clerk of this court, and conditioned to pay to the defendants, jointly or severally, all damages and costs, not exceeding the amount of said penalty, which said defendants or any of them may sustain by reason of this restraining order if it shall be finally decided that the complainant was not entitled thereto.

CHARLES H. SIMONTON,
U. S. Judge.

1 July, 1892.

38 *Notice of Motion for Temporary Injunction.*

UNITED STATES OF AMERICA,
District of South Carolina.

In the United States Circuit Court, Fourth Circuit. In Equity.

THE POSTAL TELEGRAPH CABLE COMPANY *against* THE CITY COUNCIL OF CHARLESTON and Others. } Notice of Motion for Temporary Injunction.

To the defendants above-named:

Please take notice that on behalf of the complainant in this cause we will move before his honor C. H. Simonton, judge of the United States court, at the United States court-house, in Charleston, S. C., on the 7th day of July, 1892, at ten o'clock a. m., or as soon thereafter as counsel can be heard, for a temporary injunction in the above cause, enjoining and restraining the defendants herein, and their deputies, agents, attorneys, and employees, and each and every of them, from issuing or levying any executions or other process against or upon the property of the complainants for the purpose of collecting any license-, costs, or penalties under the alleged license ordinance of the city of Charleston for the year 1892, as set out in the said bill of complaint in this cause, and from seizing, holding, taking possession of, or selling any or every part of the property of said complainant until the hearing of the aforesaid cause on the merits.

MORDECAI & GADSDEN,
Complainant's Attorneys.

Filed July 1st, 1892.

39 Entered in docket "civil cases," folio 186, July 1, 1892.

G. I. CUNNINGHAM,
U. S. Marshal.

Personally appeared H. W. Hendricks, chief deputy U. S. marshal, — sworn, says that he personally served, at Charleston, S. C., Hon. J. F. Ficken, mayor of the city of Charleston; J. Orrin Lea, chief clerk to W. L. Campbell, city treasurer, and Glenn E. Davis, city sheriff of Charleston, S. C., injunction order and notice on 1st day of July, A. D. 1892.

H. W. HENDRICKS,
Chief Deputy U. S. M.

Sworn to before me this 2nd day of July, A. D. 1892.

J. WESLEY SMITH,
U. S. Com'r.

Filed July 1, 1892.

40 *Injunction Order.*

UNITED STATES OF AMERICA, }
District of South Carolina. }

In the United States Circuit Court, Fourth Circuit. In Equity.

THE POSTAL TELEGRAPH CABLE COMPANY }
against
THE CITY COUNCIL OF CHARLESTON and Others. }

This is a hearing on a motion for a temporary injunction, served on the defendants on July 1st, 1892, along with the filing of the bill of complaint, a restraining order having also been then issued and served against the defendants.

The bill seeks an injunction against the defendants, The City Council of Charleston and its treasurer, William L. Campbell, and sheriff, Glenn E. Davis, to enjoin them from issuing or levying any execution against the property of the complainants for the purpose of collecting a license tax, penalties, and costs, under an alleged city ordinance of the city of Charleston, for the year 1892.

The grounds for the injunction, as set out in the bill of complaint, are alleged, among others, to be that the attempt to enforce this license tax against the complainants is contrary to the Constitution and laws of the United States, in that it interferes with the privileges and business of the telegraph company with reference to matters of interstate commerce, and also with its duties as a postal and governmental agent of the United States.

Now, on motion of Mordecai & Gadsden, for plaintiff, with consent of Charles Inglesby, attorney for defendant—

It is ordered that until the hearing of the aforesaid cause on the merits the defendants, The City Council of Charleston, William L. Campbell, and Glenn E. Davis, and their deputies, agents, attorneys, and employees, be and each and every of them are here-

41 by restrained from issuing or levying any execution or other process against or upon the property of the complainant, The Postal Telegraph Cable Company, for the purpose of collecting any

licenses, costs, or other penalties under the alleged license ordinance of the city of Charleston for the year of 1892, as set out in the said bill of complaint in this cause, and from seizing, holding, taking possession of, or selling any or every part of the property of said defendant.

It is furth- ordered that the complainant do, within ten days from the date of this order, file a bond with sufficient security, to be approved by one of the United States judges of some circuit or district court of the United States, in the penalty of one thousand dollars, payable to the clerk of this court, and conditioned to pay to the defendants, jointly or severally, all damages and costs, not exceeding the amount of said penalty, which said defendants or any of them may sustain by reason of this temporary injunction if it shall be finally decided that the complain-t was not entitled thereto.

Should the complainant fail to file such injunction bond within the term of ten days from the date hereof, then this injunction shall stand dissolved.

CHARLES H. SIMONTON,
U. S. Judge.

7 July, 1892.

I consent.

CHARLES INGLESBY,
Corporation Counsel.

Filed July 7th, 1892.

42 *Bond on Restraining Order.*

UNITED STATES OF AMERICA,
District of South Carolina.

In the United States Circuit Court, Fourth Circuit. In Equity.

THE POSTAL TELEGRAPH CABLE COMPANY, Plaintiff,
against
THE CITY COUNCIL OF CHARLESTON, WILLIAM L. CAMPBELL, as City Treasurer, and Glenn E. Davis, as City Sheriff, of the City of Charleston, Defendants.

Know all men by these presents that we, The Postal Telegraph Cable Company, by A. B. Chandler, its president, and its sureties, E. C. Platt and Wm. H. Baker, are held and firmly bound unto J. E. Hagood, clerk of the United States circuit court for the district of South Carolina, in the penal sum of one thousand dollars ($1,000.00), to be paid to the said J. E. Hagood, clerk of the United States circuit court for the district of South Carolina, as aforesaid, his successors and assigns; to which payment, well and truly to be made and done, we bind ourselves and each and every of our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents.

In witness whereof The Postal Telegraph Cable Company has caused these presents to be signed by its president and the said E.

C. Platt and Wm. H. Baker have signed and sealed the same at the city of New York, in the State of New York, this sixth day of July, anno Domini one thousand eight hundred and ninety-two, and in the one hundred and seventeenth year of the sovereignty and Independence of the United States of America.

The condition of the above-written bond or obligation is such that whereas a restraining order has been issued in this case
43 on the first day of July, 1892, against the said City Council of Charleston, William L. Campbell, its city treasurer, and Glenn E. Davis, its city sheriff: Now, if the above-named Postal Telegraph Cable Company and E. C. Platt and Wm. H. Baker or either of them, their or either of their certain attorney or attorneys, executors or administrators, shall pay to the said The City Council of Charleston, William L. Campbell, its city treasurer, and Glenn E. Davis, its city sheriff, the defendants in this action, jointly or severally, any and all damages and costs which they or any of them may sustain by reason of said restraining order if it shall be finally decided that the complainant was not entitled thereto, then this obligation shall be void and of none effect; otherwise to remain in full force and virtue.

POSTAL TEL. CABLE CO.,
By A. B. CHANDLER, *Pres't.*
E. C. PLATT. [L. S.]
WM. H. BAKER. [L. S.]

Signed, sealed, and delivered in the presence of—
THEODORE L. CUYLER, JR.

UNITED STATES OF AMERICA, }
So. District of New York, State, City, and County of New York, } *ss:*

Personally appeared before me E. C. Platt and Wm. H. Baker, who, being severally and duly sworn, says, each for himself, that he is worth the amount of the above bond, to wit, the sum of one thousand dollars, over all of his debts and liabilities and exclusive of property exempt from execution.

E. C. PLATT.
WM. H. BAKER.

Sworn to and subscribed before me this 6th day of July, A. D. 1892.

[SEAL.] THEODORE L. CUYLER, JR.,
Notary Public, Kings Co.

Cert. filed in *U. S.* Co.

44 UNITED STATES OF AMERICA, }
Southern District of New York, } *ss:*

The sureties on the within bond are hereby approved.

E. HENRY LACOMBE,
U. S. Circuit Judge.

Filed July 8th, 1892.

45 *Injunction Bond.*

UNITED STATES OF AMERICA, }
District of South Carolina. }

In the United States Circuit Court, Fourth Circuit. In Equity.

THE POSTAL TELEGRAPH CABLE COMPANY }
vs.
THE CITY COUNCIL OF CHARLESTON *et al.* }

Know all men by these presents that we, The Postal Telegraph Cable Company, the complainant above named, and John O. Stevens and Albert B. Chandler, are held and firmly bound unto J. E. Hagood, Esq., clerk of the United States circuit court for the district of South Carolina aforesaid, in the penal sum of one thousand dollars ($1,000.00), to be paid to the said J. E. Hagood, clerk of the said circuit court, as aforesaid, his certain attorneys, successors, or assigns; to which payment, well and truly — made and done, we bind ourselves and each and every one of our heirs and successors, jointly and severally, firmly by these presents.

Sealed with our seals and dated at Charleston, S. C., this 7th day of July, in the year of our Lord one thousand eight hundred and ninety-two, and in the one hundredth and seventeenth year of the sovereignty and Independence of the United States of America.

The condition of the above-written bond or obligation is such that whereas a temporary injunction has been issued in the above-entitled cause on the 7th day of July, A. D. 1892, against the said City Council of Charleston, William L. Campbell, and Glenn E. Davis:

46 Now, if the said Postal Telegraph Cable Company, John O. Stevens, and Albert B. Chandler or either of them, their or either of their certain attorney or attorneys, executors, or administrators, shall pay to the said City Council of Charleston, William L. Campbell, and Glenn E. Davis, the defendants in this action, any and all damages which they may suffer by reason of the said temporary injunction if it shall be finally determined that the complainant in this action was not entitled thereto, then this obligation shall be void and of none effect; otherwise to remain of full force and virtue.

POSTAL TEL. CABLE CO., [L. S.]
By A. B. CHANDLER, *Pres't.*
J. O. STEVENS. [L. S.]
A. B. CHANDLER. [L. S.]

Signed and sealed in the presence of—
THEODORE L. CUYLER, JR.

UNITED STATES OF AMERICA,
Southern District of New York, State, City, & County of New York, } *ss:*

J. O. Stevens and A. B. Chandler, above named, being severally and duly sworn, says, each for himself, that he is worth the amount of the above bond or obligation, to wit, the sum of one thousand ($1,000.00) dollars, over all his debts or liabilities and exclusive of property exempt from taxation.

J. O. STEVENS.
A. B. CHANDLER.

Sworn to before me this 11th day of July, A. D. 1892.
THEODORE L. CUYLER, JR.,
[SEAL.] *Notary Public, Kings Co.*

Cert. filed in N. Y. Co.

47 UNITED STATES OF AMERICA,
Southern District of New York.

Approved as to sufficiency of the sureties.
ADDISON BROWN,
U. S. Dist. Judge.

11th July, 1892.

Filed 13th July, 1892.

48 *Appearance.*

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit.

THE POSTAL TELEGRAPH COMPANY, Plaintiff,
against
THE CITY COUNCIL OF CHARLESTON *et al.*, Defendant-.

I appear for the City Council of Charleston, Wm. L. Campbell, and Glenn E. Davis in the cause above entitled.
CHAS. INGLESBY.

Filed 29th day of July, 1892.

49 *Answer.*

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court. In Equity.

The City Council of Charleston, one of the defendants herein, saving and reserving to itself all right of exception to the bill of

complaint of the Postal Telegraph Cable Company, for answer thereto, or to so much thereof as *they are* advised is material or necessary for *them* to make answer unto, answering, says:

I. That it has no knowledge or information sufficient to form a belief as to the allegations of paragraph I of the complaint, and therefore, neither admitting nor denying the truth of the same, pray that the said complainant may be held to strict proof thereof.

II. That as to the allegations of paragraph II of the said bill of complaint, this defendant admits that it is a municipal corporation created by and under the laws of the State of South Carolina, and that William L. Campbell and Glenn E. Davis, its codefendants, are its servants and agents, the former being its treasurer and the latter its sheriff.

And this defendant further admits that by virtue of the legislative authority of the General Assembly of the State of South Carolina, to wit, by virtue of an act of the General Assembly entitled "An act to authorize the city council of Charleston to impose a license tax on all persons engaged in any business, trade, or profession, in the city of Charleston," approved December 17, 1881, this defendant did, on the 31st day of December, 1891, enact an ordinance entitled "An ordinance to regulate licenses for the year 1892," which said ordinance, among other things, contains the several sections, clauses, and provisions set out and contained in said paragraph of the said bill of complaint.

And this defendant, further answering said paragraph, admits, that, pursuant to said ordinance, Wm. Aiken Kelly, city assessor, did notify the said complainant to appear before him at his office, in the city hall, on Thursday, May 26, 1892, at 12 m., concerning the license tax of the said complainant to do business for this year, and that, having failed to appear as so notified, the said Wm. Aiken Kelly, on the 28th day of May, 1892, by virtue of and in obedience to the said ordinance, did assess against the said complainant the license tax of $500, together with 50% penalty thereon, and did turn over the said assessment and penalty to the city treasurer of the city of Charleston for collection, who, as required by the said ordinance and after the expiration of the time therein specified, did issue his execution therefor, addressed to Glenn E. Davis, city sheriff, requiring him to proceed to collect said license tax and penalty by distress and sale or by levy and sale, in the same manner as is provided by law for the collection of other taxes, together with an additional penalty of five per cent.; and this defendant admits the demand of the said Glenn E. Davis, city sheriff, as set forth and alleged in said paragraph of said complaint.

III. And this defendant denies the allegations of paragraphs III & IV of the said complaint.

IV. And this defendant, answering, alleges that by written agreement paragraph V of the complaint is stricken out by said complainant.

V. That this defendant believes the allegations of paragraphs VI & VIII to be true.

VI. That as to the allegations of paragraphs VII & VIII this defendant has not knowledge or information sufficient to form a belief; that as to the allegations of paragraphs IX, X, & XI this defendant denies that t his defendant or its codefendant and servant and employee, Glenn E. Davis, city sheriff, has ever levied on or threatened to levy on and sell the poles, wires, batteries, and instruments or any of them belonging to the said complainant, or
51 in any way impeding or interfering with the interstate or governmental agency business, or in any way to prevent the said complainant carrying on its interstate telegraphic business or from performing its contract with the Government of the United States; on the contrary, this defendant says that, as appears in paragraph II of said complaint, the license tax charged against the said complainant is for "business done exclusively within the city of Charleston, and not including any business done to *or* from points without the State, and not including any business done for the Government of the United States, its officers or agents."

Wherefore this defendant submits that the license tax charged against complainant is a lawful and constitutional tax, which in equity and good conscience should be paid by complainant, and that no injunction of this court should run against this defendant or its servants and employees unless this defendant should attempt to interfere by levy or otherwise with the alleged interstate or governmental business of said complainant, which interference this defendant, as aforesaid, denies ever having attempted or having intended to attempt. Wherefore this defendant prays that the said injunction be removed, and that it be dismissed with its reasonable costs and charges in this behalf most wrongfully sustained.

CHARLES INGLESBY,
Corp. Counsel, for Def'd'ts.

52 STATE OF SOUTH CAROLINA, }
Charleston County. }

John F. Ficken, being sworn, says that he is mayor of the city of Charleston; that the within answer is true of his own knowledge.

JNO. F. FICKEN.

Sworn to before me this 1st day of August, A. D. 1892.

EDWARD W. HUGHES,
Notary Public for So. Ca.

Filed 10 June, 1893.

53 *Answer.*

UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court. In Equity.

Wm. L. Campbell, city treasurer, and Glenn E. Davis, city sheriff, saving and reserving to themselves all right of exception to the bill

of complaint of The Postal Telegraph Cable Company, for answer thereto, or to so much thereof as they are advised is material or necessary for them to make answer unto, answering, say that, admitting that they are respectively city treasurer and city sheriff of the said municipal corporation, the city council of Charleston, they adopt as their own the answer (which has been carefully read by them) of the said city council of Charleston.

Further answering, they deny that they have ever been ordered to levy or that they have ever attempted to levy or have ever intended to levy on or sell the poles, wires, batteries, and instruments or any of them belonging to the said complainant or in way to impede or interfere with the interstate or governmental agency business of the said complainant.

And, having fully answered, these defendants pray to be hence dismissed with their reasonable costs and charges.

CHARLES INGLESBY,
Def'd'ts' Att'y.

Verification waived and service accepted.

MORDECAI & GADSDEN,
Pl'ff's Attorney-.

Filed 10 June, 1893.

54 *Trial of Cause.*

These cases came up together for hearing by consent. The pleadings and the following testimony were read to the court. Mr. Inglesby moved to dismiss the bill for want of jurisdiction. After hearing arguments by Mr. Lee and Mr. Mordecai, for complainants, and by Mr. Inglesby, for the defendant, and by Mr. Lee and Mr. Mordecai in reply, the court took the cases under advisement.

55 *Testimony.*

UNITED STATES OF AMERICA,
District of South Carolina.

In the United States Circuit Court. In Equity.

THE POSTAL TELEGRAPH CABLE COMPANY, Plaintiff,
vs.
THE CITY COUNCIL OF CHARLESTON and Others, Defendants.

M. S. HARRIS, witness for the complainant, being duly sworn, testifies as follows:

I am the manager and representative of the Postal Telegraph Cable Company in the city of Charleston and have been for some years past. There are clerks, electricians, employees, and messenger boys under me in said office employed in the business of the company. I have examined the bill of complaint in the above cause very carefully, and I can testify to the facts set out in it.

The allegation of paragraph one with regard to the incorporation of the Postal Telegraph Cable Company, the objects of its business, and also its control by ownership or as lessee of the various telegraph lines, and also with regard to its having offices and telegraph lines in different parts of the country, and especially in the State of South Carolina and in the city of Charleston, are all true and within my knowledge, and I adopt the statements there as my testimony.

I also testify that the Postal Telegraph Cable Company has accepted, as alleged in the complaint, the terms of the act of Congress approved July 24th, 1866, now title 65 of the U. S. Revised Statutes, and that accordingly it has undertaken and is bound to perform the duties and responsibilities incurred by such acceptance; this is all fully set out in the complaint and I adopt it as my testimony.

I also adopt as my testimony the allegations with regard to the telegraph lines running into and through the city of Charles-
56 ton and connecting over post roads and other highways, as set out in the said paragraph, with the cities, towns, and villages of the United States and Territories, and also that these lines are constructed over the navigable streams of the United States, not, however, obstructing the navigation of the same.

And this witness further testifies that before and during the year commencing Jan. 1st, 1892, and prior to that time, for several years, and since then, the Postal Telegraph Cable Company was engaged in the business of receiving and sending telegrams for private persons and for the public, between the city of Charleston and other places within the State of South Carolina in which it has offices, and also in sending telegraphic communications between the governmental department of the United States, and that it was and is engaged in the telegraph business for purposes of interstate commerce and as governmental agent aforesaid, and this witness adopts as his testimony all of the allegations stated in paragraph one.

Witness further states that he has carefully read the statement of facts in paragraph 2 in regard to the incorporation of the city of Charleston and the passage of the ordinance in question, and that the same are true, and he so testifies; and he also testifies as to the facts stated in the said paragraph with regard to the assessment and notice made about the 28th day of May, 1892, and the issuing of the execution by the said sheriff on the first day of July, 1892, for the sum of $750.00 and five per cent. penalty and costs.

Witness also adopts as his testimony the facts stated in paragraphs 3 and 4.

Witness further adopts as his testimony the statements of facts in paragraphs 4 and 4*a*, and he further testifies that the Postal Telegraph Cable Company does no business exclusively in the city of Charleston, merely having in that city offices for receiv-
57 ing and sending telegraphic messages to and from different points within and wit-out the State of South Carolina, including the governmental messages already referred to. Witness further state- that it has offices in other cities and towns in South

Carolina—among others, Columbia, Camden, Bennettsville, Aiken, Branchville, ans other places in the State, besides in numerous small places, most of which are incorporated as towns or cities, having the right to exact licenses, and many of them having actually passed such ordinance.

Witness testifies that all the facts stated in paragraphs 5 and 6 and 6*a* are true, and he adopts them as his testimony. If the city had levied on and sold its plant in Charleston it would have stopped and ruined the business of the Postal Telegraph Cable Company; would have prevented it from carrying out its governmental contracts with the United States Government, and the loss and damage would have been far in excess of $2,000.00—in fact, it would be irremediable; it could not be compensated in money at all, for the entire business would have been ruined and disorganized, and would have effected the business of the company not only in the city of Charleston, but would have necessarily involved business in every part of the United States and foreign countries depending on the sending and receiving of messages from and at Charleston. Witness testifies that if the poles, wires, and other plant had been levied on they could not have been replaced for anything like $2,000.

Witness further testifies that William E. Campbell and Glenn E. Davis, the city treasurer and city sheriff, are men of small and limited means. Judgment against them for any large amount in an action for damages by the Postal Telegraph Cable Company, in witness' opinion, would be valueless. Witness testifies that the facts with regard to the effect of the levy and sale upon the business of the Postal Telegraph Cable Company which it has to per-
58 form for the Government of the United States are true, and the effect would be as stated in the seventh paragraph.

Witness further testifies that a levy on the poles, batteries, &c., would stop the business of this company which it has to perform for the Government of the United States.

Witness further states and testifies that the Postal Telegraph Cable Company, at the times mentioned in the complaint and for years before that and since then, has always paid full taxes on the property which it owns in Charleston and other parts of South Carolina, and also a tax upon its gross receipts, as required by law, the rates of taxation being assessed and levied in the same way as is done with regard to the property of other individuals and corporations in South Carolina and Charleston, all the property of the Postal Telegraph Cable Company situated in the city of Charleston and also its gross receipts paying the taxes required by law.

Filed June 10th, 1893.

59 CITY OF CHARLESTON, S. C.,
TREASURY DEPARTMENT, *June 8th*, 1893.

I certify that the tax return for 1892 of the Postal Cable Telegraph Company is as follows:

"Value of all telegraph and telephone lines and instruments and fixtures of same	$790 00
Gross amount of all receipts of express, telegraph, and telephone companies between 1st June, 1891, and 1st June, 1892	638 00
Total value of personal property	$1,428 00

Amount of city tax for year 1892, at 23 mills, $32.84."

J. O. LEA,
City Treas'r.

Filed June 10th, 1893.

60 *Opinion & Order Dissolving Injunction & Dismissing Bill.*

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit. In Equity.

THE WESTERN UNION TELEGRAPH COMPANY
vs.
THE CITY COUNCIL OF CHARLESTON *et al.*

THE POSTAL TELEGRAPH CABLE COMPANY
vs.
THE CITY COUNCIL OF CHARLESTON *et al.*

These two cases, covering precisely the same averments and issues, were heard together. The complainants are corporations, each organized under the laws of New York. Each of them has an office in the city of Charleston, and each is engaged in sending messages by wire to points in the United States, to points outside of this State and in other countries on this continent, and is connected by cable with the Old World. Each of them is thus an instrument of and engaged in interstate commerce. Besides this, each of them having its lines over the post roads, highways, and railroads in the city of Charleston, State of South Carolina, and in others of the United States, has accepted the provisions of the act of Congress approved 24th July, 1866, to aid in the construction of telegraph lines. By this action the company so accepting puts its line at the service of the United States for postal, military, and other purposes, and gives precedence to its messages over all other
61 business. It thus becomes an agent of the Government. The bills, having made statements to this effect, proceed to say that the city council of Charleston, assuming to act under an act of the General Assembly of South Carolina, passed an ordinance to

regulate licenses for the year of 1892; that by this ordinance all persons engaged in business of the kinds thereinafter set forth, as a condition precedent for carrying on such business, are required to prepare a statement for the city assessor, each giving his name, place of business, and amount of business, for the fiscal year for the purpose of assessment of the license tax; that if he fail so to do the city assessor shall proceed to assess him the amount provided in the ordinance and to add thereto a penalty of fifty per cent; that he shall report this to the city treasurer, who shall then issue his warrant for the collection of the same and place the same in the hands of the city sheriff for distress or levy, adding five per cent. for his fees; that each of the complainants decided not to make, and in fact did not make, any such statement or apply for such license; whereupon the city assessor assessed each of them five hundred dollars and added thereto the penalty of fifty per cent. and reported the same to the city treasurer, who issued thereon his warrant and placed the same in the hands of the city sheriff, who now threatens to levy upon the property of the telegraph companies. Each complaint avers that the demand for this license and penalty is illegal and void; that the mode of inforcing the demand will interfere with and destroy the business of the company, rendering it incapable of performing its functions as an agent of the Government or an instrument of interstate commerce, and prays an injunction. A temporary injunction was issued. The defendant filed an answer.

62 At the hearing a motion was made to dimiss the bills for want of jurisdiction, the amount in controversy not exceeding two thousand dollars, beside interest and costs. To this motion complainants reply that each of them is a Government agent of the United States and as such entitled to seek relief in this court without regard to the amount in controversy, and that the amount in controversy does exceed the limit prescribed by the act of Congress, and thus the diversity of citizenship would sustain the jurisdiction. This motion, like a demurrer, admits, for the purposes of the motion, the allegations of the bill. As agencies of the Government, these companies, in all matters affecting their existence as such agents, have a right to come into this court without regard to the amount in controversy (Yardley *vs.* Dickson, 47 Fed. Rep., 835; United States *vs.* Shaw, 39 Fed. Rep., 435). It would seem also that the jurisdiction can be maintained on the other ground. The value of the object to be gained fixes the amount in controversy for jurisdictional purposes (Foster's Federal Practice, sec. 16). The object to be gained here is exemption from a license tax of $500 per annum. An injunction in a case like this must be of much greater value to the complainant than the sum immediately demanded (Symonds *vs.* Green, 28 Fed. Rep., 834; Whitmire *vs.* Hubbel, 30 Fed. Rep., 81; Texas Pacific R'y Co. *vs.* Kuteman, 54 Fed. Rep., 552; R. R. Co. *vs.* Ward, 2 Black, 485). Each bill alleges irreparable injury in the destruction of its business. The right to conduct this business is alleged to be involved, and a valuable franchise, it is said, is threatened. The demurrer to the jurisdiction is overruled. The provisions of the ordinance to be construed are those requiring a

license to be taken out by any person, firm, company, or corporation engaged or engaging in business in the city of Charleston, upon statement made of the amount of the business, upon which
63 the city assessor shall assess the proper license tax; also the imposition of a penalty for each and every offence on such as fail to comply with the ordinance. The imposition of this penalty on each of the complainants, based on this item in the ordinance, is as follows: "35. Telegraph companies or agencies, each, for doing business exclusively within the city of Charleston and not including any business done to or from points without the State, and not including any business done for the Government of the United States, its officers or agents, $500."

The first question which rises naturally is, Is this a license a condition upon the performance of which the right to do business depends and to which the right of doing business is referred, or is it a tax? This question is answered in Home Insurance Co. *vs.* City Council, 93 U. S., 122. The State of Georgia required all foreign insurance companies, as a condition precedent for doing business in that State, to get a certificate from the comptroller general, to be issued upon a sworn statement of certain facts required in the act. The Home Insurance Company of New York had such a certificate. The city of Augusta passed an ordinance requiring all insurance companies to take out a license annually and pay a certain sum of money therefor. The Home Insurance Company disputed the validity of this ordinance and denied the necessity for the license. The counsel for the company, leaders of the New York bar, contended before the Supreme Court that the term "license" means permission or authority; that it is a right given by some competent authority to do an act which without such authority would be illegal; that having the right to do the business of insurance from its charter and the permission to do its business in the State of Georgia from the act of its legislature, a license from the city
64 of Augusta was unnecessary and its requirement unlawful. The Supreme Court replied to this argument and overruled it. They held that the payment required was a special tax, although called a license, levied in the mode prescribed; that the penalty was a mode of enforcing its payment, and that the license when issued was only a receipt for the tax. In Wiggins Ferry Co. *vs.* East St. Louis, 107 U. S., 376, the same court, discussing the right of a city to require a license from a ferryman whose ferries crossed a navigable stream dividing two States, take the same view, and sustained the tax against the contention that it interfered with interstate commerce. "The exaction of a license fee is an ordinary exercise of the police power by a municipal corporation." "The power of the State to authorize any city within its limits to enforce a license tax on trades or callings generally, especially those which are quasi-public, cannot be disputed." "Whether a license fee is exacted under the power to regulate or the power to tax is a matter of indifference if the power to do either exists." In South Carolina the same point is decided and the license tax sustained in The State *vs.* Hayne, 4 So. Ca., 403; State *vs.* Columbia, 6 So. Ca., 1.

This being a tax, are these agents of the Government and istruments of interstate commerce subject to the tax?

The tax is one for business done exclusively within the city of Charleston. The business is the receiving and the sending of messages by wire. As this is the controlling initial point of messages sent, and the concluding, consummating point of messages delivered, these words, without qualification, cover all messages sent and received. A shipping and commission merchant may be said to do his business exclusively in Charleston, where he ships goods from and receives goods at this port, although to com-
65 plete such business the goods are carried to and from other points. The draughtsman of this ordinance knew, however, that the business done by these companies between points without this State and the city of Charleston was protected from taxation by the interstate-commerce law—Western Union Tel. Co. *vs.* Texas, 105 U. S., 460—and that in all business done for the Government its agent was protected from taxation. Western Union Tel. Co. *vs.* Alabama, 132 U. S., 473. So this part of the ordinance carefully excludes any such attempt, "not including any business done to or from points without the State and not including any business done for the Government of the United States, its officers or agents." But here its exemption ends. Although a telegraph company is an instrument of commerce and an agent of the United States, "its property in the State is subject to taxation as is other property, and it may immediately be taxed in a proper way on account of its occupation and business." Waite, Ch. J., in Telegraph Co. *vs.* Texas, *supra*. Mr. Justice Miller, delivering the opinion of the court in Western Union Tel. Co. *vs.* Alabama, 132 U. S., 473, thus sums up the law on this subject as formulated in decisions of the Supreme Court: "The principle in regard to telegraph companies which have accepted the provisions of the act of Congress, 24th July, 1866, is that they shall not be taxed by the authorities of any State for any messages or receipts from messages from points within the State to points without the State, or from points without the State to points within the State, but that such taxes can be levied upon all messages carried and delivered exclusively within the State." Precisely the same principle exists with regard to another instrument of commerce, express companies. Pacific Express Co. *vs.* Seibert, 142 U. S., 350. The case of Western Union Tel. Co. *vs.* Mass., 125 U. S., 530, is on a line with these decisions. The license tax in this
66 case is not unreasonable, nor will its payment imperil or tax the existence of either of the companies or its business in this city.

The temporary injunction heretofore granted is dissolved in each case, the motions for injunction refused, and each bill is dismissed with costs.

CHARLES H. SIMONTON,
U. S. Judge.

21st June, 1893.

Filed 21st June, 1893.

67 *Judgment.*

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit.

THE POSTAL TELEGRAPH COMPANY, Plaintiff,
against
THE CITY COUNCIL OF CHARLESTON, Defendant.

This action having been brought to a trial at a circuit court held on the first Monday of April, A. D. 1893, and a judgment for the defendant having been rendered therein by the court, and the costs having been adjudged at sixty-nine $\frac{5}{100}$ dollars:

Now, on motion of Charles Inglesby, attorney for said defendant, it is adjudged that The City Council of Charleston, defendant, recover of said The Postal Telegraph Company, plaintiff, sixty-nine $\frac{5}{100}$ dollars.

CHARLES INGLESBY,
D'f'd't's Att'y.

Taxed costs.

Signed judgment & execution.
[SEAL.] J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

Filed 13 July, 1893.

68 *Execution.*

THE UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit.

To George I. Cunningham, United States marshal, or his lawful deputies, Greeting:

Whereas judgment was rendered on the 21st day of June, one thousand eight hundred and ninety-three, in an action in the circuit court of the United States for the district of South Carolina, between The Postal Telegraph Company, plaintiff, and The City Council of Charleston, defendant, in favor of said defendant against the said plaintiff, from the 13 day of July, 1893, and also for the sum of sixty-nine $\frac{5}{100}$ dollars costs and charges therein, as appears to us by the judgment-roll filed in the office of the clerk of the said court;

And whereas the sum of sixty-nine $\frac{5}{100}$ dollars costs and charges aforesaid are now actually due thereon:

Therefore we command you that you satisfy the said judgment out of the personal property of the said judgment debtor within your district, or, if sufficient personal property cannot be found,

then out of the real property in your district belonging to such judgment debtor on the day when the said judgment was so docketed in your district, or at any time thereafter, in whose hands so ever the same may be, and duly return this execution, according to law, to the clerk of the said court, at Charleston, S. C.

Witness Hon. Melville W. Fuller, Chief Justice of the United States, at Charleston, S. C., the 13 day of July, one thousand eight hundred and ninety-three.

CHARLES INGLESBY,
Def'd't's Attorney.

[SEAL.] J. E. HAGOOD,
C. C. C. U. S., for Dist. S. C.

69 *Petition for Appeal & Assignment of Error.*

UNITED STATES OF AMERICA,
District of South Carolina

Circuit Court, Fourth Circuit. In Equity.

THE POSTAL TELEGRAPH CABLE COMPANY, Complainant,
against
THE CITY COUNCIL OF CHARLESTON and Others, Defendants.

To the judges of the United States circuit court for the district of South Carolina:

Now comes your petitioner, The Postal Telegraph Cable Company, complainant in the above-entitled action, and doth hereby petition for an appeal from the decree and judgment of this court, made on the 1st day of June, 1893, in the above-entitled cause, to the Supreme Court of the United States, and prays that the said appeal may be allowed, and that a transcript of the record and proceedings upon which said order or decree was made, duly authenticated, may be sent to the said the Supreme Court of the United States, and herewith files the following assignments of error, which are intended to be urged on the hearing of said appeal in said Supreme Court of the United States:

1. That the court should have held that the alleged ordinance of the city council of Charleston, entitled "An ordinance to regulate licenses for the year 1892," is in contravention of title sixty-five of the Revised Statutes of the United States and in violation of the provisions of section 8, article one, of the Constitution of the United States, and is "*ultra vires*" and void.

2. That the court should have held that the petitioner is not liable for any license under the provisions of said ordinance,
70 for the further reason that it does not come under the provisions thereof and does not transact the business so made liable to said license under the said ordinance.

3. That the court should have held that (inasmuch as by the terms of said ordinance the license is attempted to be laid only "for business done exclusively within the city of Charleston," and

the undisputed testimony being that it does no "business exclusively within the city of Charleston," but that it has in the said city offices which are merely initial points for sending telegraphic messages elsewhere and terminal points for receiving such messages, but that the sending, receiving, and carrying of such messages is a continuous and complete transaction, extending almost instantaneously along its different entire lines and routes from the said city of Charleston to and from different points within and without the State of South Carolina) this petitioner was not liable to said license charge.

4. That the court should have held that the undisputed testimony being that the other cities and towns in South Carolina had actually passed similar ordinances and such license exactions under such ordinances being also made against your petitioner by the said various cities and towns and to and along said routes, the said messages and business would be licensed at every point and this petitioner could not be again charged by the city council of Charleston for a license for practically the same purpose.

5. That the court should have held that the petitioner was not liable to the license claimed, and that such a license was a tax upon its franchise and, as such, unconstitutional and in violation of the Constitution of the United States and of the laws of the Congress of the United States, because it appears from the testimony
71 that your petitioner pays to the city council of Charleston a tax upon its property and also a tax upon its gross interstate receipts.

6. That the court should have held that said ordinance is in violation of section one of the 14th amendment of the Constitution of the United States.

7. That the court should have held that said ordinance does not afford the petitioner the equal protection of the laws that are applied to individuals upon taxation of property.

8. That the court should have held that the act of the General Assembly of South Carolina entitled "An act to authorize the city council of Charleston to impose a license tax on all persons engaged in any business, trade, or profession in the city of Charleston," approved the 17th day of December, 1881 (under which act said alleged ordinance was passed), is in violation of section 8, article one, of the Constitution of the United States.

9. That said court should have held that said ordinance of the city council of Charleston is in violation of section 4, article one; section 12, article one; section 14, article one; sections 23 & 26 of article one; sections 36 & 40, article one; section 1, article 9; section 8, article 9, respectively, of the constitution of South Carolina.

10. That the court should have held that said license tax and charge upon the defendant are a restraint upon the use of the post roads of the United States and are an infringement upon the legislative domain of Congress, and are also a restraint upon the franchise of the defendant in the State of South Carolina, and are a restraint upon trade and interstate commerce and communication by telegraph between the States, and are a restraint upon the duly

authorized agent of the United States Government in the transaction of Government business; that the enforcement of said license would be against the public policy of the State of South
72 Carolina and against the public policy of the United States; that thereby your petitioner is assessed and taxed upon its property and business for public purposes at a greater rate than is assessed or taxed upon the property and business of individuals within said State, and is not according to the value of said property of petitioner, and at a much greater rate of taxation for public purposes than is other moneyed capital or property employed or invested in commercial business and employed in other operations within the State of South Carolina is taxed or assessed for public purposes, and said license taxes were unequally imposed and are inequitable and contrary to the constitution of South Carolina and contrary to the Constitution of the United States and the laws of Congress.

11. That the court should have held that the telegraph property used by the petitioner is assessed and taxed upon its value the sum of — dollars per mile for each mile of wire thereof, and that property of like nature and use belonging to other corporations in the State of South Carolina is of much more value and use than is that of defendant, and yet it is assessed and taxed to the extent only and in the same manner and amount for license as is that in use by defendant.

12. That the court should have held that the warrant for the collection of the tax and license charges was and is void, and was issued without authority of law.

13. That the court erred in finding that the license charge in this case was a tax and was not a condition upon the performance of which the right to do business depends and to which the right of doing business was referred.

MORDECAI & GADSDEN,
Solicitors for the Postal Telegraph Cable Company, Petitioners.

Filed 19 Aug., 1893.

73 *Order Allowing Appeal.*

UNITED STATES OF AMERICA, }
District of South Carolina. }

Circuit Court, Fourth Circuit. In Equity.

THE POSTAL TELEGRAPH CABLE COMPANY, Complainant, }
against
THE CITY COUNCIL OF CHARLESTON, Defendants. }

And now, to wit, on the 19 day of August, 1893, it is ordered that the appeal herein prayed for by the Postal Telegraph Cable Company be allowed as prayed for, and that a citation do issue in accordance therewith, returnable on the 16th day of September, in the year of our Lord one thousand eight hundred and ninety-three; let the appellants also file a bond within twenty days from the date of this order, with security, to be approved by one of the judges

of the United States court for the district of New York, in the sum of one thousand dollars, conditioned that the said complainant shall prosecute its said appeal to effect and answer all damages and costs if the complainant should fail to make good its appeal, and the same is hereby made a supersedeas.

August 19th, 1893.

CHARLES H. SIMONTON,
U. S. Judge.

Filed 19 Aug., 1893.

74 *Supersedeas Bond.*

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit. In Equity.

THE POSTAL TELEGRAPH CABLE COMPANY
vs.
THE CITY COUNCIL OF CHARLESTON.

Know all men by these presents that we, The Postal Telegraph Cable Company, as principal, and Wm. H. Baker and E. C. Platt, as sureties, are held and firmly bound unto the City Council of Charleston in the penal sum of one thousand dollars, to be paid to the said City Council of Charleston; to which payment, well and truly to be made and done, we bind ourselves and each of us, jointly and severally, and each of our successors, heirs, executors, and administrators, firmly by these presents.

In witness whereof the said Postal Telegraph Cable Company has caused these presents to be signed by its vice-president and its corporate seal attached, and the said Wm. H. Baker and E. C. Platt have hereunto set their hands and seals this 19th day of August, A. D. 1893.

The condition of the above obligation is such that whereas the above-named The Postal Telegraph Cable Company has appealed to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States for the district of South Carolina:

Now, therefore, the condition of this obligation is such that if the above-named The Postal Telegraph Cable Company shall
75 prosecute its said appeal to effect and answer all damages and costs if it should fail to make good its appeal, then this obligation to be void and of none effect; otherwise it shall be and remain in full force and virtue.

POSTAL TELEGRAPH CABLE CO.,
By WM. H. BAKER, *Vice-pres't.*
E. C. PLATT. [L. S.]
WM. H. BAKER. [L. S.]

Attest: J. O. STEVENS, *Sec'y.*

Signed, sealed, & delivered in the presence of—
CHAS P. BRUCH.
R. S. GUERNSEY.

STATE OF NEW YORK, }
County of New York, } ss:

Wm. H. Baker and E. C. Platt, being each first duly sworn, each for himself on his oath deposes and says that he is one of the sureties named in the foregoing obligation; that he is a resident, citizen, and householder in the city of Brooklyn, in the county of Kings, in the State of New York; that he is worth the sum of two thousand dollars in property within the State of New York, over and above his debts and liabilities, not by law exempt from execution.

WM. H. BAKER.
E. C. PLATT.

Sworn to and subscribed before me this 19th day of August, 1893.

THEODORE L. CUYLER, JR.,
[SEAL.] *Notary Public, Kings Co.*

Cert. filed in N. Y. Co.

STATE OF NEW YORK, }
City and County of New York, } ss:

On this the 19th day of August, 1893, before me, Theodore
76 L. Cuyler, Jr., a notary public in and for the county and State aforesaid, personally appeared Wm. H. Baker, and known to me to be the vice-president of the Postal Telegraph Cable Company, and acknowledged to me that he signed and delivered the foregoing instrument on behalf of the said Postal Telegraph Cable Company, and caused the corporate seal of said company to be thereto attached on the day and year therein mentioned, as the act and deed of the said Postal Telegraph Cable Company.

In witness whereof I have hereunto set my hand and affixed my notarial seal the year and day above written.

THEODORE L. CUYLER, JR.,
[SEAL.] *Notary Public, Kings Co.*

Cert. filed in N. Y. Co.

STATE OF NEW YORK, }
City and County of New York. }

Personally appeared before me Charles P. Bruch, who, being duly sworn, says that he was present and saw the within-named Wm. H. Baker and E. C. Platt sign and seal and, as their respective act and deed, deliver the above-written deed, and that he with R. S. Guernsey witnessed the execution thereof.

CHAS. P. BRUCH.

Sworn to and subscribed before me this 19th day of August, 1893.

THEODORE L. CUYLER, JR.,
[SEAL.] *Notary Public, Kings Co.*

Cert. filed in N. Y. Co.

I hereby approve the foregoing as good and sufficient security. The sureties to the above bond seem to me good and sufficient.

E. HENRY LACOMBE,
U. S. Circuit Judge, Second Circuit.

August 28th, 1893.

77 Approved:

CHARLES H. SIMONTON,
U. S. Judge.

19th August, 1893.

Filed 19th August, 1893.

78 UNITED STATES OF AMERICA,
District of South Carolina.

Circuit Court, Fourth Circuit. In Equity.

THE POSTAL TELEGRAPH CABLE COMPANY, Complainant,
against
THE CITY COUNCIL OF CHARLESTON and Others, Defendants.

Citation.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the City Council of Charleston, William L. Campbell, and Glen E. Davis, Greeting:

You and each of you are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, in the District of Columbia, on the 16 day of September, in the year of our Lord 1893, pursuant to an appeal filed in the clerk's office for the circuit court of the United States for the district of South Carolina, wherein The Postal Telegraph Cable Company is appellant and the above-named defendants are appellees, to show causes, if any there be, why the judgment in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles H. Simonton, judge of the circuit court of the United States for the district of South Carolina, this 19 day of August, A. D. 1893.

CHARLES H. SIMONTON,
U. S. Judge.

79 [Endorsed:] United States of America, district of South Carolina. In the circuit court, fourth circuit. In equity. The Postal Telegraph Cable Company, complainant, *vs.* The City Council of Charleston *et al.*, defendants. Citation. Filed 19 Aug., 1893. J. E. Hagood, C. C. C. U. S., dist. S. C. Service accepted of copies of within for the defendants in this case this 24 Aug., 1893. Charles Inglesby, corporation counsel.

80 *Clerk's Certificate.*

UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit.

I, J. E. Hagood, clerk of the circuit court of the United States for the district of South Carolina, do hereby certify that the foregoing is a true and correct copy of all the records and proceedings in the case of The Postal Telegraph Cable Company, complainant, against The City Council of Charleston *et al.*, defendants, rendered as aforesaid, together with all things relating to the same, as appears by the records now on file in my office.

Given under my hand and seal of said court, at clerk's office, in the city of Charleston, S. C., in the district aforesaid, this 9th day of September, A. D. 1893.

[Seal U. S. Circuit Court, District of So. Carolina.]

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

Endorsed on cover: Case No. 15,393. South Carolina C. C. U. S. Term No., 1009. The Postal Telegraph Cable Company, appellant, *vs.* The City Council of Charleston, William L. Campbell, and Glen E. Davis. Filed September 20, 1893.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

THE POSTAL TELEGRAPH CABLE COMPANY, APPELLANT.

vs.

CITY COUNCIL OF CHARLESTON, WILLIAM L. CAMPBELL AND GLENN E. DAVIS.

BRIEF OF MR. R. S. GUERNSEY, AND MESSRS. MORDECAI & GADSDEN FOR APPELLANT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

STATEMENT.

This is an action brought by the Postal Telegraph Cable Company, a body corporate under the laws of the State of New York against the City Council of Charleston, William L. Campbell and Glenn E. Davis to restrain the collection of a license imposed upon the said Postal Telegraph Cable Company by the City Council of Charleston under the provisions of an ordinance entitled "An Ordinance to regulate licenses for the year 1892," as follows:

SECTION 1. Be it ordained by the mayor and aldermen of the City of Charleston, in City Council assembled: That every person, firm, company or corporation engaged in, or intending to engage in any trade, business or profession hereinafter mentioned, within the limits of the City of Charleston, shall obtain on or before the 20th day of January, A. D. 1892, a license therefor in the manner hereinafter prescribed. Every person, firm, company or corporation commencing business after the said 20th day of January, A. D. 1892, shall in like manner obtain a license therefor before entering upon such trade, business or profession.

Said ordinance imposes a penalty of 50 per cent. of the amount of

the license tax for the failure to take out the same, and continuing penalties of 50 per cent. for each day's business done without taking out such license. The subdivision of said ordinance relating to telegraph companies is as follows:

35. Telegraph companies or agencies, each, *for business done exclusively within the City of Charleston* and not including any business done to or from points without the State, and not including any business done for the Government of the United States, its officers or agents..... .....$500 00

The complaint alleges that the Postal Telegraph Cable Company is a body corporate under the laws of the State of New York, having its principal place of business in the City of New York, State of New York, and it was and is engaged in the business of a Telegraph Company having offices in the City of Charleston, State of South Carolina, for the purpose of receiving and sending telegraphic messages and maintaining and operating certain lines of telegraph on the various post roads, public roads and railroads leading into and from the City of Charleston to the City of Augusta, in the State of Georgia, and to the City of Savannah in the said last mentioned State, and other points in other States in the United States, and in the Dominion of Canada; and that by its charter it is authorized to construct, maintain or operate lines of telegraph in and between the various States of the Union, including the State of South Carolina.

That on or about the 6th day of March, 1886, said Telegraph Company duly filed its written acceptance with the Postmaster General of the United States of the restrictions and obligations of the act of Congress, entitled "An Act to aid in the construction of the telegraph lines and to secure to the Government the use of the same for postal, military and other purposes," approved July 24th, 1866, and known as Title 65 of the United States Revised Statutes.

That under authority of the said Act of Congress, and under the provisions of its said charter, it proceeded to construct and now has its lines on various public roads, being post roads of the United States, in the State of South Carolina and in the City of Charleston and in all the States and territories into which its lines extend.

That by its name and by virtue of the Act of incorporation and subject to the Constitution and Statute laws of the United States, it was on and previous to the 1st day of January, 1892, and still is engaged in said telegraph business, for the purpose of inter-state commerce and as a governmental agent of the United States of America, operating its lines of telegraph in, upon and along the post roads of the United States in, through and over the streets of the City of Charleston, from its offices within the said City of Charleston to those without the State of South Carolina as hereinbefore set forth."

On July 1st, 1892, Judge Simonton issued a temporary restraining order, and on the 7th of July, 1892, he also issued a temporary in-

junction enjoining the defendants from proceeding to collect said license until the hearing of the case on its merits. Thereupon the City Council of Charleston served its formal answer denying the allegations contained in said complaint. After hearing the case on its merits, Judge Simonton, on the 21st day of June, 1893, made an order dissolving the injunction and dismissing the suit, which order was based mainly upon the grounds:

First. That the license sought to be imposed was not a condition upon the performance of which the right to do business depends, and to which the right of doing business, is referred.

Second. That the said The Postal Telegraph Cable Company did business exclusively within the city of Charleston.

The jurisdiction of the Court below is fully sustained by the Court in the opinion, but the bill is dismissed on the merits.

There is no conflict of evidence; all the allegations of fact in the bill are admitted and not denied, and are merely corroborated by the evidence offered by the plaintiff.

Therefore, this Court on this appeal can review the entire action of the Court below, and is called upon to do so by the assignments of error.

From this order the plaintiffs appellant have appealed to this Court upon the following assignments of error:

1. That the Court should have held that the alleged ordinance of the City Council of Charleston, entitled "An ordinance to regulate licenses for the year 1892," is in contravention of Title 65 of the Revised Statutes of the United States, and in violation of the provisions of Section 8, Article I of the Constitution of the United States, and is *ultra vires* and void.

2. That the Court should have held that the petitioner is not liable for any license under the provisions of said ordinance, for the further reason that it does not come under the provisions thereof, and does not transact the business so made liable to said license under the said ordinance.

3. That the Court should have held that (inasmuch as by the terms of said ordinance the license is attempted to be laid only "for business done exclusively within the city of Charleston," and the undisputed testimony being that it does no "business exclusively within the city of Charleston," but that it has in the said city offices which are merely initial points for sending telegraphic messages elsewhere, and terminal points for receiving such messages, but that the sending, receiving and carrying of such messages is a continuous and complete transaction, extending almost instantaneously along its different entire lines and routes from the said city of Charleston to and from different points within and without the State of South Carolina,) this petitioner was not liable to said license charge.

4. That the Court should have held that the undisputed testimony being that the other cities and towns in South Carolina had actually passed similar ordinances and such license exactions under such ordinances being also made against your petitioner by the said various cities and towns and to and along said routes, the said messages and business would be licensed at every point, and this petitioner could

not be again charged by the City Council of Charleston for a license for practically the same purpose.

5. That the Court should have held that the petitioner was not liable to the license claimed, and that such a license was a tax upon its franchise, and, as such, unconstitutional and in violation of the Constitution of the United States and of the Laws of the Congress of the United States, because it appears from the testimony that your petitioner pays to the City Council of Charleston a tax upon its property *ad valorem* and also a tax upon its gross inter and intra State receipts.

6. That the Court should have held that said ordinance does not afford the petitioner the equal protection of the laws that are applied to individuals upon taxation of property.

7. That the Court should have held that the Act of the General Assembly of South Carolina entitled "An Act to authorize the City Council of Charleston to impose a license tax on all persons engaged in any business, trade or profession in the city of Charleston," approved the 17th day of December, 1881, (under which Act said alleged ordinance was passed) is in violation of Section 8, Article I, of the Constitution of the United States.

9. That said Court should have held that said ordinance of the City Council of Charleston is in violation of Section 4, Article 1; Section 12, Article 1; Section 14, Article 1; Sections 23 and 26 of Article 1; Sections 36 and 40, Article 1; Section 1, Article 9; Section 8, Article 9, respectively, of the Constitution of South Carolina.

10. That the Court should have held that said license tax and charge upon the defendant are a restraint upon the use of the post roads of the United States and are an infringement upon the legislative domain of Congress, and are also a restraint upon the franchise of the defendant in the State of South Carolina, and are a restraint upon trade and inter-state commerce and communication by telegraph between the States, and are a restraint upon the duly authorized agent of the United States Government in the transaction of Government business; that the enforcement of said license would be against the public policy of the State of South Carolina, and against the public policy of the United States; that thereby your petitioner is assessed and taxed upon its property and business for public purposes at a greater rate than is assessed or taxed upon the property and business of individuals within said State, and is not according to the value of said property of petitioner, and at a much greater rate of taxation for public purposes than is other moneyed capital or property employed or invested in commercial business and employed in other operations within the State of South Carolina is taxed or assessed for public purposes, and said license taxes are unequally imposed and are inequitable and contrary to the Constitution of South Carolina, and contrary to the Constitution of the United States and the laws of Congress.

11. That the Court should have held that the telegraph property used by the petitioner is assessed and taxed upon its value the sum of .....dollars per mile for each mile of wire thereof, and that property of like nature and use belonging to other corporations in the

State of South Carolina is of much more value and use than is that of defendant, and yet it is assessed and taxed to the extent only and in the same manner and amount for license as is that in use by defendant.

12. That the Court should have held that the warrant for the collection of the tax and license charges was and is void, and was issued without authority of law.

13. That the Court erred in finding that the license charge in this case was a tax and was not a condition upon the performance of which the right to do business depends, and to which the right of doing business was referred.

This Court is thereby called upon to take judicial notice of the Constitution and laws of the State of South Carolina.

The State Constitutional provisions which the Court is called upon to examine are as follows:

SOUTH CAROLINA CONSTITUTION.

Section 1, Article 4: "Every citizen of this State owes paramount allegiance to the Constitution and Government of the United States, and no law or ordinance of this State in contravention or subversion thereof can have any binding force."

Section 12: "No person shall be disqualified as a witness, or be prevented from acquiring, holding and transmitting property, or be hindered in acquiring education, or be liable for any other punishment for any offence, or be subjected in law to any other restraints or disqualifications in regard to any personal rights than such as are laid upon others under like circumstances."

Section 14: "No person shall be arrested, imprisoned, despoiled or dispossessed of his property, immunities or privileges, put out of the protection of the law, exiled or deprived of his life, liberty or estate, but by the judgment of his peers or the law of the land. And the General Assembly shall not enact any law that shall subject any person to punishment without trial by jury nor shall he be punished but by virtue of a law already established, promulgated prior to the offence, and legally applied."

Section 23: "Private property shall not be taken or applied for public use, or for the use of corporations, or for private use, without the consent of the owner, or a just compensation being made therefor; *Provided, however*, That laws may be made securing to persons or corporations the right over the lands of either persons or corporations, and for works of internal improvement, the right to establish depots, stations, turnouts, etc.; but a just compensation shall, in all cases, be first made to the owner."

Section 26, Article 4: "In the government of this Commonwealth the legislative, executive and judicial powers of the Government shall be forever separate and distinct from each other, and no person

or persons exercising the functions of one of said departments shall assume or discharge the duties of any other."

Section 36: "All property subject to taxation shall be taxed in proportion to its value. Each individual of society has a right to be protected in the enjoyment of life, liberty and property, according to standing laws. He should, therefore, contribute his share to the expense of his protection, and give his personal service when necessary."

Section 40: "*All* navigable waters shall remain forever public highways, free to the citizens of the State and the United States, without tax, impost or toll imposed; and no tax, toll, impost or wharfage shall be imposed, demanded or received from the owner of any merchandise or commodity for the use of the shores, or any wharf erected on the shores, or in or over the waters of any navigable stream, unless the same be authorized by the General Assembly."

Article 9, Section 1: "The General Assembly shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe such regulations as shall secure a just valuation for taxation of all property—real, and personal and possessory—except mines and mining claims, the proceeds of which alone shall be taxed; and also excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes."

Article 9, Section 8: "That the corporate authorities of counties, townships, school districts, cities, towns and villages may be vested with power to assess and collect taxes for corporate purposes; such taxes to be uniform in respect to persons and property within the jurisdiction of the body imposing the same. And the General Assembly shall require that all the property, except that heretofore exempted within the limits of municipal corporations, shall be taxed for the payment of debts contracted under authority of law."

These raise the following propositions of law, which we will proceed to discuss in their order.

ARGUMENT.

PROPOSITION I.

POINT I.

A State Constitution in regard to restrictions applies to all kinds of municipal government under it.

(Cooley on taxation, 2nd Ed., page 134 and cases there cited).

POINT II.

Under Art. 4.—SEC. 36—State Constitution, all property subject to taxation shall be taxed in proportion to its value.

The ordinance which imposes this tax of $500 is void because it is specific taxation of property or the use of it.

(See Harman vs. Chicago,—147 U. S., page 396).

POINT III.

In the passage of this ordinance and the mode of its enforcement, the legislative, judicial and executive branches of the City Government are all in one body in conflict with the State Constitution which provides that the legislative, judicial and executive departments shall be separate.

POINT IV.

The authority of a municipal body to do any act like this to raise revenue, must affirmatively appear; it cannot be presumed to exist, particularly when it appears to be in conflict with State Constitutional provisions.

The laws of the State of South Carolina in regard to power of the City of Charleston to raise revenue by taxation are as follows:

A. D. 1881. AN ACT TO AUTHORIZE THE CITY COUNCIL OF CHARLESTON TO IMPOSE A LICENSE TAX ON ALL PERSONS ENGAGED IN ANY BUSINESS, TRADE OR PROFESSION IN THE CITY OF CHARLESTON.

WHEREAS, by an inadvertence in an Act entitled "An Act to regulate the assessment and taxation of personal property in the City of Charleston," approved March 1st, 1870, it has been questioned whether the intent of the said Act to empower the City Council of Charleston to impose a license tax on persons engaged in business in the City of Charleston can be accomplished.

Section 1. Be it enacted by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, That the City Council of Charleston be, and are hereby authorized to require the payment of such sum or sums of money not exceeding five hundred dollars, for license or licenses, as in their judgment be just and wise, by any person or persons engaged, or intending to engage in any calling business or profession, in whole or in part, within the limits of the City of Charleston, except those engaged in the calling or profession of teachers and ministers of the gospel.

Sec. 2. The said City Council of Charleston is hereby authorized to pass such Ordinances as are necessary to carry the intent and purposes of this Act into full effect.

Sec. 3. That this Act shall take effect from the date of its approval.

In the Senate House, the seventeenth day of December, one thousand eight hundred and eighty-one.

J. D. KENNEDY,
President of the Senate.
J. C. SHEPPARD,
Speaker of the House of Representatives.

Approved December 17th, A. D., 1881.

JOHNSON HAGOOD,
Governor.

THE CITY ORDINANCES PROVIDE

{ Feb. 13, 1870, § 1. }
{ Jan. 18, 1871, § 3. }

I. That all real and personal property within the limits of the City of Charleston shall be appraised at its actual value, and all taxes shall be levied thereon at a uniform and equal rate.

Ib., § 36. All property to be taxed according to its selling value in money.

"XXXVI. All real and personal property shall be valued for taxation at its true value in money, which in all cases not otherwise specially provided for in this ordinance, shall be held to be the usual selling price of similar property at the place where the return is to be made; and if there be no selling price, then at what is honestly believed could be obtained for the same at a fair sale at the place aforesaid."

Ib., § 43. Penalty for non-payment of taxes in time prescribed.

"XLIII. When the taxes, assessments, and penalties charged against any parcel or lot of real or personal property shall not be paid on or before the day prescribed by the ordinance, a penalty of twenty per cent. thereon shall be added by the City Treasurer; and if the said taxes and penalty shall not be paid within thirty days next thereafter, or collected by distress or otherwise, the penalty and said taxes shall be treated as the delinquent taxes on such real or personal property, to be collected in the manner that is or may be prescribed by law; and if the amount of such delinquent taxes, assessments and penalties shall not be paid within thirty days next thereafter, the delinquent taxes, assessments and penalties of the current year shall be due and collected by the sale of such real or personal estate in the manner that is or may be required by law."

POINT I.

If the State Statute properly authorized the license charge for revenue, it did not authorize the amount of penalty for non-payment. The penalty can only be to the amount that is prescribed by

statute for the non-payment of taxes upon property which is taxed *ad valorum* belonging to individuals.

POINT II.

If the amount of license penalty is valid the mode of the collection of it by summary execution to the Sheriff is not authorized by statute and the City officers who issued it and attempted to enforce it have no statutory authority to do so and it is void.

POINT III.

The City Council and those acting under them in the enforcement of the execution against property are not judicial officers, so their authority to do the alleged acts must affirmatively appear.

POINT IV.

The whole proceeding complained of is absolutely in disregard of *due process of law.*

No notice of the fixing of the amount of tax and penalty was ever given the appellant and the complainant had no opportunity to be heard and no process of law has ever been had in any Court or lawful body, and no opportunity to be heard before the enforcement of the execution. The notice was only to appear before the assessor after the amount was fixed, and the Company and its business designated on the tax list, and was only for the purpose of ascertaining if the nature of the business was correctly stated and the Company desired to continue the business and take out a license therefor for the ensuing year, at the terms stated in said ordinance.

PROPOSITION II.

THE LICENSE REQUIRED BY THE ORDINANCE IS A TAX UPON THE TELEGRAPH COMPANY FOR THE PRIVILEGE OF EXERCISING ITS FRANCHISE WITHIN THE CITY OF CHARLESTON AND IS NOT A MERE EXERCISE OF THE POLICE POWER GRANTED TO THE CITY BY THE STATE.

A license "is permission or authority; as a license to do a particular thing."

Anderson's Law Dictionary—License.

A license is a permit to do a business which could not be lawfully done without such license.

San Francisco vs. L. & L., & G. Ins. Co., 5th Am. St. R.—425.

Cooley on Taxation—page 386.

A license is issued under the police power, but the exaction of a license fee with a view to revenue would be the exercise of the power of taxation.

Cooley's Constitutional limitations—245.

Is this license charge then a condition precedent, which must be complied with before the Company can commence operations?

In the case of LeLoup vs. Port of Mobile, 127, U. S., 640, the license under consideration was as follows:

"Be it ordained by the Mobile Police Board that the license tax for the year from the 15th of March, 1883, to the 15th of March, 1884, be, and the same is hereby fixed as follows:

On telegraph companies.... ....$225 00

"Be it further ordained that for each and every violation of the aforesaid ordinance the person convicted thereof shall be fined by the Recorder not less than one dollar nor more than fifty dollars."

On page 644 the Court construes said ordinance as follows; "In approaching the question thus presented, it is proper to note that the license tax in question is purely a tax on the privilege of doing the business in which the telegraph company was engaged. By the laws of Alabama in force at the time this tax was imposed, the telegraph company was required, in addition, to pay taxes to the State, county and port of Mobile, on its poles, wires, fixtures and property at the same rate and to the same extent as other corporations and individuals were required to do. Besides the tax on tangible property they were also required to pay a tax of three-quarters of one per cent. on their gross receipts within the State."

In the present case the Circuit Judge bases his decision upon this point on the cases of Home Insurance Company vs. City Council, 93 U. S., 132, and in Wiggins Ferry Co., vs. East St. Louis, 107 U. S., 376.

This Court has held in several important cases recently decided that a State can prohibit a foreign corporation from doing business within its territory or can impose conditions upon the exercise of its franchises, but that this would not apply to such as were engaged in inter-state commerce or were agents of United States Government.

Pambina Mining Co. vs. Penn., 125 U. S., 181.

In Pensacola Telegraph Co. vs. Western Union Co., 96 U. S., 12, the Court says:

"We are aware that in Paul vs. Virginia (8 Wall, 168,) this court decided that a State might exclude a corporation of another State from its jurisdiction, and that corporations are not within the clause of the constitution which declares that "the citizens of

each State shall be entitled to all privileges and immunities of citizens in the several States." Art. 4, Section 2. That was not, however, the case of a corporation engaged in inter-state commerce; and enough was said by the Court to show, that, if it had been, very different questions would have been presented. The language of the opinion is, "It is undoubtedly true, as stated by counsel, that the power conferred upon Congress to regulate commerce includes as well commerce carried on by corporations as commerce carried on by individuals.... This state of facts forbids the supposition that it was intended in the grant of power to Congress to exclude from its control the commerce and corporations. The language of the grant makes no reference to the instrumentalities by which commerce may be carried on; it is general and includes alike commerce by individuals, partnerships, associations and corporations. . . . The defect of the argument lies in the character of their (insurance companies) business. Issuing a policy of insurance is not a transaction of commerce. . . . Such contracts (policies of insurance) are not inter-state transactions, though the parties are domiciled in different States."

As the license charge exacted in this case—Home Insurance Company vs. City Council—was on an insurance company, the decision of the Court in that case cannot be relied upon to sustain a license imposed upon a Telegraph Company which has repeatedly been decided to be an instrument of inter-state commerce.

It is true that in the case of Wiggins Ferry Company vs. East St. Louis—107 U. S., 376—this Court sustained a license imposed upon the Wiggins Ferry Company by the City of East St. Louis, but it was upon the ground that the license in question was not in its essence a contribution claimed for the privilege of using a navigable river of the United States for arriving or departing from one of its ports.

We submit that this case has been practically overruled by subsequent decisions of this Court, and especially by the case of Le Loup vs. Port of Mobile—127 U. S., 648—in which it was decided that a State had not the right to lay a tax on inter-state commerce in any form, whether on the transportation of the subjects of that company or on the receipts derived from that transportation, or on the occupation of business of carrying it on.

PROPOSITION 3.

THE POSTAL TELEGRAPH CABLE COMPANY HAVING CONSTRUCTED ITS LINES ALONG THE POST ROADS IN THE CITY OF CHARLESTON, NO STATE OR MUNICIPAL AUTHORITY CAN EXACT A LICENSE FOR THE PRIVILEGE OF CONDUCTING ITS BUSINESS AND RESTRAINING THE POWERS CONFERRED UPON IT UNDER ITS FRANCHISES AND UNDER THE ACTS OF CONGRESS.

In other words, that the said Telegraph Company being so engaged in inter-state business and being, by reason of its acceptance of the Act of Congress an Agent of the Government, and its said lines being situate in the streets of City of Charleston, which are admitted

to be post roads of the United States, no restrictions can be placed upon it by the City of Charleston for the privilege of conducting its said business, and *it is only subject to the usual ordinary and uniform taxation in common with all other species of property situate within said City of Charleston.*

The question is fairly presented to the Court whether a municipal corporation can impose on a Telegraph Company a license for the privilege of doing business. This question, in its present form, has never been directly passed upon by this Court. It will be noticed that the ordinance under consideration is on business done exclusively within the City of Charleston, and not including business done to or from points without the State, nor business done for the Government nor its agents. These modifications of the ordinance have been made in consequence of the decision of the United States Supreme Court in Le Loup vs. Mobile—127 U. S.—wherein it was decided that a State or municipal corporation did not have the authority to tax inter-state messages, and in the case of Telegraph Company vs. Texas—105 U. S., 460—in which it was decided that the tax on the Government messages was unconstitutional, and while the terms of the ordinance have been changed so as to exclude inter-state and Government messages, the amount of the ordinance, viz.: $500, has been uniform and unchanged; so that, in its present form, and with the modifications above pointed out, the Ordinance squarely presents the question whether a municipal corporation can exact from a Telegraph Company, which has accepted the provisions of the Act referred to, a license charge for the privilege of transacting its business within its jurisdiction. We submit that the true construction of Section 5263 of the Revised Statutes is that a Telegraph Company is exempted from any special legislation on the part either of the State or municipal corporation, which might result in either excluding it from the territory included within such jurisdiction, or so hampering its operations as to render it useless for the purposes of the Government or for the general inter-state business for which it was instituted. This statute has been construed by this Court in a number of important cases. In Pensacola Telegraph Company vs. Western Union Telegraph Company, 96 U. S., page 11, Chief Justice Waite, delivering the opinion of the Court, says:

"The Statute of July 24th, 1866, in effect amounts to the prohibition of all State monoplies in this particular: It substantially declares, in the interest of commerce and the convenient transmission of intelligence from place to place by the Government of the United States and its citizens, that the erection of telegraph lines shall, so far as a State interference is concerned, be free to all who submit to the conditions imposed by Congress, and that corporations organized under the laws of one State for constructing and operating telegraph lines shall not be excluded by another from prosecuting their business within its jurisdiction, if they accept the terms proposed by the National Government for this national privilege."

In the language of Chief Justice Waite, therefore, no State or

municipal corporation can enact any legislation which in effect would tend to exclude a Telegraph Company from its territory.

In Telegraph Company vs. Texas—105 U. S., 464—Chief Justice Waite, again construing the Statute, in his opinion, says: "Congress, to facilitate the erection of telegraph lines, has by Statute authorized the use of the public domain and the military and post roads, and the crossing of navigable streams and waters of the United States for that purpose. As a return for this privilege those who avail themselves of it are bound to give the United States precedence in the use of their lines for public business at rates to be fixed by the Postmaster General. Thus, as to Government business, companies of this class become Government agencies. The Western Union Telegraph Company having accepted the restrictions and obligations of this provision by Congress, occupies in Texas the position of a Government agent for the transmission of messages on public business. Its property in the State is subject to taxation the same as other property, and it may undoubtedly be taxed in a proper way on account of its occupation and its business."

In Western Union Telegraph Company vs. Pendleton—122 U. S. 358—the Courts say:

"In these cases the supreme authority of Congress over the subject of commerce by the telegraph with foreign countries, or among the States, is affirmed whenever that body chooses to exert its power, and it is also held that the States can impose no impediments to the freedom of that commerce. * * * * * * * The Supreme Court of Indiana placed its decision in support of the statute principally upon the ground that it was the exercise of the police power of the State. Undoubtedly, under the reserved powers of the State, which are designated under that somewhat ambiguous term of police powers, regulations may be prescribed by the State for the good order, peace and protection of the community. The subjects upon which the State may act are almost infinite, yet in its regulations with respect to all of them there is this necessary limitation: that the State does not thereby encroach upon the free exercise of the power vested in Congress by the Constitution. Within that limitation it may, undoubtedly, make all necessary provisions with respect to the buildings, poles and wires of telegraph companies in its jurisdiction, which the comfort and convenience of the community may require."

In the case of Western Union Telegraph Company vs. Massachusetts—125 U. S., 530—the Commonwealth of Massachusetts imposed a tax upon the Western Union Telegraph Company, based on the value of the shares of the corporation apportioned to that State. The answer of the defendant corporation set up that of its 2,833 miles of line within the State of Massachusetts more than 2,334 were over, under or across post roads, made such by the United States, leaving only 498 miles not over or along such post roads, on which the Company offered to pay the proportion of the tax assessed, according to mileage, by the State authorities.

Mr. Justice Miller, in delivering the opinion of the Court, says:

"The tax in the present case, though nominally upon the shares of the capital stock of the Company, is in effect a tax upon that organization on account of property owned and used by it in the State of Massachusetts, and the proportion of the length of its lines in that State to their entire length throughout the whole country is made the basis for ascertaining the value of that property. We do not think that such a tax is forbidden by the acceptance on the part of the Telegraph Company of the rights conferred by §5263 of the Revised Statutes, or by the commerce clause of the Constitution."

While the opinion of the Court in this case may be construed to mean that a Telegraph Company can claim no exemption by reason of its acceptance of Section 5263 of the Revised Statutes, yet we think that the subsequent cases decided by this Court show conclusively that such was not the intention of the decision, for in the case of Ratterman vs. Western Union Telegraph Company, 127th U. S., 411th, decided at the same term as the case last cited, Mr. Justice Miller, who delivered the decision in the Western Union vs. Massachusetts, in his opinion refers to that case as follows: "In the recent case of the Western Union Telegraph Company vs. the Attorney General of the Commonwealth of Massachusetts, 125 U. S., 530, decided at this term, a tax was levied upon that corporation apportioned under the laws of Massachusetts upon the taxable value of its capital stock. The ratio which should have been allotted to that Commonwealth may be supposed to have been properly apportioned to it, ascertaining that portion by means of the length of the lines of the Company in relation to the entire mileage of its lines in the United States. The payment of the tax was resisted, however, partly upon the ground that it was levied upon inter-state commerce, but mainly because it was asserted to be a violation of the rights conferred on the company by the Act of July 24th, 1866, now Title LXV, §§ 5263 to 5269 of the Revised Statutes. It was alleged that the defendant Company, having accepted the provisions of that law, was entirely exempt from taxation by the State. *This Court, however, held that this exemption only extended, under that law, to so much of the lines of the Telegraph Company as were, in the language of Section 5263,* "through and over any portion of the public domain or post roads of the United States, which have been or may hereafter be declared such by the law, and over, under or across the navigable streams or waters of the United States." "It was shown, in that case, that of the 2,833.05 miles of the lines of the defendant corporation within the boundaries of Massachusetts, more than 2334.55 miles came within the terms of that Section, being over or along post roads, made such by the United States, or over, under or across its navigable streams or waters, leaving only 498.50 miles not within such description, on which the company offered to pay the proportion of the tax assessed against it according to mileage by the State authorities. We refer to this now only for the purpose of showing how easily the subject of taxation which is forbidden by the Constitution may be separated from that which is permissible in this class of cases."

* * * * * * *

"In the present case the counsel for the Telegraph Company have argued that this statute secures the corporation from taxation of any kind whatever, and especially as to receipts arising there being no allegation, from messages sent over its lines; but *that question does not arise* in the bill itself or in the statement of facts, that any part of the lines of the Telegraph Company in the State of Ohio is built over or along a post road, or comes within the provisions of § 5263. The only reference to this subject is in the following allegation of the bill: "That prior to 1869 your orator accepted in writing the provisions of the Act of Congress of July 4th, 1866, 14 Stat. 221." Under this allegation the complainant can, of course, claim no benefit from the provisions of that section, for it does not appear that any part of the company's line comes within the description of this section of the Revised Statutes."

Here we have an express intimation by the Court that had the allegations of the bill in Ratterman vs. Western Union Telegraph Company averred that the lines of the Western Union Telegraph Company were constructed on post roads of the United States, they would have been entitled to claim the benefit of the Act of Congress of 1866, and would have been exempt from taxation of any kind in accordance with the terms of that Act. The allegations of the bill in the case at bar state that the lines of the Company are laid in the streets of the city of Charleston, all of which are post roads of the United States, therefore the plaintiff in error is entitled to claim all the benefit which it can derive by reason of its acceptance of that Act, and also by reason of the fact that all of its lines are laid on post roads of the United States. Mr. Justice Miller, in Ratterman vs. Western Union Telegraph Company, has declared that the intention of the Court, in Western Union Telegraph Company vs. Massachusetts, was, that the exemption extended under that law to so much of the lines of the Telegraph Company as were, in the language of § 5263, on post roads of the United States, and in Ratterman's case the same Justice declares that the Western Union Telegraph Company cannot avail itself of the benefits of this interpretation of § 5263, on the ground that the allegations of their bill contain no statement that their lines were constructed on post roads of the United States. Every attempt by State or Municipal authorities to exact a greater amount of taxation from telegraph companies than that imposed upon property belonging to other individuals and corporations, has been uniformly declared unconstitutional by this Court. Each successive restriction sought to be imposed upon telegraph companies has been held by this Court to restrict the freedom of their operations and their usefulness as agents of inter-state Commerce. The Courts have jealously guarded this important instrument and agent of the Government from any and all encroachments by State authorities, in order to leave it free and unrestricted to conduct the business for which it was instituted with the greatest possible efficiency and to the greatest satisfaction of the commercial world. We think that a careful study of the Statute under consideration taken in connection with the construction given it by this Court in the numerous cases above cited,

show conclusively that it was not the intention of Congress to prohibit the States from imposing upon the property of Telegraph Companies situate within their respective territories, "the usual and ordinary burdens of taxation borne by every other class of property" in such State, and so the general State and county tax upon the value of his real and personal property has been held valid as affecting telegraph companies as well as all other species of property. So, a tax on gross receipts within the State for business done within the State is not invalid, so also municipal taxes upon real and personal property must be paid by telegraph companies equally with all other property owners within a city; but further than this, the Supreme Court has denied the right of the State to go. Any tax on real or personal property affecting all property owners alike, whose rate is uniform and based on some well established mode of assessment, has been uniformly upheld by this Court; but in other instances in which an attempt has been made to exact a license from a telegraph company in addition to the taxes upon its real and personal property and upon its gross receipts for the privilege of exercising its franchises, has been held unconstitutional and void. The position taken by the defendants in error is, that in exempting interstate business and business done for the Government, they have stripped this ordinance of all unconstitutional features, and that the license upon business done exclusively within the city of Charleston does not come within the terms of the Act of Congress, and is not prohibited by the Constitution of the United States. But the business of a telegraph company is so dependent upon the efficiency of each and all of its parts that a restriction laid upon one of its members necessarily affects and cripples the entire usefulness of the company for the purposes for which it was instituted. It is a settled policy of the law that it will not allow that to be done by indirection which it has declared unconstitutional if done directly. It appears from the statements of facts herein that the local business of the Company is inconsiderable, and almost the entire business of the Company is inter-state. In fact, as is generally known, the large volume of business done by all telegraph companies is essentially inter-state business; their local business is usually of very little consequence, and only incidental to the inter-state business which is the main object of the corporation. If a municipal authority has the right to impose upon a telegraph company a license tax for the privilege of conducting its local business, while it is denied the right to impose such a tax for the privilege of transacting its inter-state business, it is at once manifest that the provisions both of the Constitution of the United States and of Section 5263, utterly fail to afford the Company the protection which the Courts have uniformly decided they were entitled to. If the power to tax includes the power to destroy, the power to license local bnsiness would necessarily, and as a logical result, include the right to prohibit altogether the conduct of such business.

In 1890 the City Council of Charleston endeavored to collect a tax of $500 from the plaintiff in error based upon the

entire business of the company. This was declared to be unconstitutional. A second attempt, in 1891, was made to collect the same sum of $500 based upon the inter-state business of the Company without excepting business done for the Government, and this was also found to be unconstitutional, and now, in 1892, we have the City Council of Charleston endeavoring to collect same sum of $500 from the same company by merely changing the phraseology of its ordinance in order theoretically to bring the ordinance within the Constitution of the United States, and yet practically accomplish the same result, viz: to require the Telegraph Company to pay the sum of $500 for the privilege of conducting its business within the limits of said city. It will be seen at once that if the City Council of Charleston have the power to exact a license of $500 they have the equal right to impose a license of $5,000 upon this Company which would undoubtedly prevent the company from having an office in the City of Charleston and thus in effect it would be an interference with inter-state commerce and would entirely exclude the Telegraph Company from exercising its franchises within the City of Charleston. It is idle to say that it is improbable that the license charge would ever be fixed at such a sum because the law looks at the ultimate and possible effects of a power and not at its immediate exercise.

At folio 36 appears the statement of the City Treasurer as follows:

CITY OF CHARLESTON, S. C.

Treasury Department, June 8th, 1893.

I certify that the tax return for 1892 of the Postal Cable Telegraph Company is as follows:

Value of all telegraph and telephone lines and instruments and fixtures of same.....$790 00

Gross amount of all receipts of express, telegraph and telephone companies between 1st June, 1891, and 1st June, 1892.... ..... 638 00

Total value of personal property..... .....$1,428 00

Amount of city tax for year 1892, at 23 mills, $32.84."

J. O. LEA,
City Treasurer.

From this it will be seen that the Postal Telegraph Cable Company has paid a tax of 23 mills on the value of all its property, poles, wires, instruments, fixtures, etc., within the City of Charleston. That it has also paid a similar tax on the gross amount of all receipts for the year 1891 and 1892 and yet, in addition to this the t-tempt is made by the City Council of Charleston to *exact a further license* on this same business done within the City of Charleston of $500.00 under the general tax levy borne by all property owners, within the City of Charleston. The Telegraph Company is required to pay and has paid on the gross amount of all receipts including

business done within the City of Charleston, as well as business done outside of said city a tax of 23 mills on $638.00 or $14.67 and yet the attempt is made to require the same company to pay a license of $500.00 on its receipts from business done exclusively within the City of Charleston.

We therefore contend that in paying the City of Charleston a tax of 23 mills on the value of its poles, wires, instruments, etc., and on *the amount of its gross receipts*, this Company, in the language of the decision, has been made subject to all the usual and ordinary burdens of taxation which it is liable for along with other persons and corporations within the City of Charleston. That it is not here claiming exemption from the burdens of taxation necessary to support the Government, from which it derives its protection, but that it has paid them, as appears from the statement of facts, and in doing so claims that it has discharged all the obligations which it owes to the City of Charleston, and which can legally be required.

PROPOSITION 4.

THE POSTAL TELEGRAPH CABLE COMPANY DOES NO BUSINESS WHICH CAN PROPERLY BE INCLUDED UNDER THE PROVISIONS OF THIS ORDINANCE, FOR THE REASON THAT IT DOES NO BUSINESS EXCLUSIVELY WITHIN THE CITY OF CHARLESTON.

We submit that the Company does no business exclusively within the City of Charleston, and that therefore this license charge, while apparently based upon strictly local business, is really an attempt indirectly to tax the inter-state business of this Company. The wording of the license is as follows: "Telegraph Companies or agencies, each, for business done *exclusively* within the City of Charleston, and not including business done to or from points without the State, and not including any business done for the Government of the United States, its officers or agents." The allegations of the Bill on this point are as follows:

"IV. Your orator further avers that it is not liable for any license under the provisions of said ordinance for the further reason that it does not come under the provisions thereof, and does not transact the business so made liable to said license under the said ordinance. That by the terms of the said ordinance the license is attempted to be laid only "for business done exclusively within the City of Charleston;" and your orator shows and alleges that it does no "business exclusively within the City of Charleston;" that it has in said city offices which are merely initial points for receiving such messages; but that the sending, receiving and carrying of such messages is a continuous and complete transaction, extending almost instantaneously along its different entire lines and routes from the said City of Charleston to and from different points within and without the State of South Carolina, as aforesaid. And that if license exactions were allowed to and made by the various cities, and to and along said routes, the said messages

and business would be licensed at every point with manifest injustice and great injury and wrong to your orator."

The draftsman of this ordinance knowing that the City Council of Charleston had no authority to exact a license charge from this Company for business done within the State of South Carolina, because the City Council of Charleston had no jurisdiction beyond its limits, has confined the operation of the ordinance to business done exclusively within the City of Charleston. The plaintiff in his bill avers that it does no business exclusively within the City of Charleston; that its offices in Charleston are mere initial points for the sending of messages and terminal points for their receipt; that the business of sending a message is a continuous transaction, extending almost instantaneously along its different entire lines and roads from the City of Charleston to other cities and towns in the State of South Carolina. The testimony of M. S. Harris, Manager for the Postal Telegraph Cable Company at Charleston, shows conclusively that the Company does no business exclusively within the City of Charleston. The City of Charleston is not of sufficient extent for messages to be sent from one office to the other office of this Company within its limits, and, therefore, this license tax is a charge upon business sent from the City of Charleston to other cities and towns in the State of South Carolina, and received at the City of Charleston from such places. It is submitted that no such power has been conferred upon the City Council of Charleston to lay a license charge upon such business.

As Mr. Justice Field, in Western Union Telegraph Company vs. Pendleton—122 U. S., 356—says:

"Although intercourse by telegraphic messages between the States is thus held to be inter-state commerce, it differs in material particulars from that portion of commerce with foreign countries and between the States which consists in the carriage of persons and the transportation and exchange of commodities upon which we have been so often called to pass. It differs not only in the subjects which it transmits, but in the means of transmission. Other commerce deals only with persons, or with visible and tangible things. But the telegraph *transports nothing visible and tangible*; it carries only ideas, wishes, orders and intelligence. Other commerce requires the constant attention and supervision of the carrier for the safety of the persons and property carried. *The message of the telegraph passes at once beyond the control of the sender, and reaches the office to which it is sent instantaneously.* It is plain, from these essentially different characteristics, that the regulations suitable for one of these kinds of commerce would be entirely inapplicable to the other."

From its very nature two points are necessary for the sending of a message by telegraph; a point from which it is sent, and a point at which it is received, and at no one of these points can the business of sending that message be considered as exclusively done; for on a message sent from Charleston to Columbia, in the State of South Carolina, only part of the business is done in the City of Charleston, and the rest is completed in the City of Columbia; it is a continuous and instantaneous transaction, and under the ordi-

nance in question, the same message which is taxed as done exclusively within the City of Charleston, is subject to a further charge by the City Council of Columbia as done exclusively within the City of Columbia, as the same message appears in the returns of both offices, as done by them respectively. So we say, that so far as the business of a Telegraph Company is concerned, there is no business done exclusively within any one point. This being admitted, what business is it of a Telegraph Company which comes within the provisions of this ordinance. The same reason which prohibits a State from laying a tax upon inter-state business as an attempt to tax business done outside its territorial limits, would deny to the City Council of Charleston the right to lay a license charge upon a message passing between Charleston and Columbia. So far as the right to impose this license charge is concerned, the City Council of Charleston has no more authority to exact a license for a message sent between Charleston and Columbia than the State of South Carolina would have for a message sent between Charleston and New York. They are both based upon the same principle of law; the acts of neither could have an extra territorial effect.

Even admitting, for the sake of argument, the authority of the City Council of Charleston to exact a license upon all local or inter-state business, sent from or received at said city, we submit that said ordinance is inequitable and unjust, and out of all proportion to the business done by said Company.

At folio 36 of the brief it appears from a certificate of the City Treasurer that the gross amount of receipts of the Postal Telepraph Cable Company, from 1st of January 1891 to 1st of January 1892, was $638.00. Even admitting, as we have said before, the right of the City Council of Charleston to levy a license charge upon this character of business, it appears that they have exacted a license of $500.00 from the Postal Telegraph Cable Company for a business whose gross receipts amount to $638.00. The license exacted is nearly 80 per cent. of the business done. A mere statement of this proposition is sufficient to convince the Court of the unfairness of the license charged, and serves only to accentuate the argument that while apparently it is a charge upon the local business of the company, it is really based upon the total receipts of the company from intra and inter-state commerce, for upon no other basis can the City Council of Charleston arrive at such an amount. Can it be reasonably contended that it is just and equitable to exact from this Company a license of $500.00 for a privilege of doing $638.00 of business; is it not manifest that this is merely a device under cloak of the law to accomplish what the law has otherwise declared to be unconstitutional?

PROPOSITION V.

THE ORDINANCE IN QUESTION IS AN INTERFERENCE WITH INTERSTATE COMMERCE AND IS ULTRA VIRES AND VOID.

If this then can be considered as in effect an attempt to impose a license charge upon the inter-state commerce of this Company it is

in violation of Section 8, Article 1, of the Constitution of the United States, and is ultra vires and void. In support of this proposition we think it only necessary to quote the following language of Mr. Justice Bradley in Le Loup vs. Port of Mobile—127, U. S., 648:

"In our opinion such a construction of the Constitution leads to the conclusion that no State has the right to lay a tax on inter-state commerce in any form, whether by way of duties laid on the transportation of the subjects of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on, and the reason is that such taxation is a burden on that commerce and amounts to a regulation of it, which belongs solely to Congress. This is the result of so many recent cases that citation is hardly necessary."

"Pensacola Tel. Co. vs. Wes. Union Tel. Co., 96, U. S., 1.
Western Union Tel. Co. vs. Texas, 105, U. S., 460.
Pickard vs. Pullman, So. Car Co., 117, U. S., 34."

PROPOSITION VI.

THE PRINCIPLE INVOLVED UNDER THE PROVISIONS OF THE UNITED STATES CONSTITUTION WILL BE DISCUSSED HERE IN CONNECTION WITH THE STATE LAWS AND STATE CONSTITUTION.

The appellants claim that the decision of the U. S. Supreme Court, in the case of Le Loup vs. Mobile, 127 U. S. S. Ct. Reports, p. 640, and cases there cited should be followed in the case at bar.

The principle involved in that case is the same as in the case at bar.

That was a city ordinance of Mobile, authorized by the State law of Alabama, altering and imposing a license charge upon every telegraph company of $225 for the year, and imposing a fine upon the manager of every telegraph company for doing business without such license and payment of the fee specified therefor.

The manager of the Western Union Telegraph Company in Mobile, declined to take out a license under said ordinance, and was taken before a magistrate and fined five dollars for the offence. His conviction was confirmed by the Supreme Court of the State of Alabama, on appeal to the U. S. Supreme Court it was reversed.

The head notes are as follows: "Where a telegraph company is doing the business of transmitting messages between different States, and has accepted and is acting under the telegraph law passed by Congress, July 24th, 1866, no State within which it sees fit to establish an office can impose upon it a license tax, or require it to take out a license for the transaction of such business."

"A general license tax on a telegraph company affects its entire business, inter-state as well as domestic or internal, and is unconstitutional."

"The property of a telegraph company situated within a State may be taxed by the State, as all other property is taxed; but its business of an inter-state character cannot be thus taxed."

This case has been followed by the State Court of South Carolina, in Charleston vs. Postal Telegraph Cable Co., 9 R. R. & Corporation Law Jur., p. 129, and also by a State Court in Pennsylvania, in Bradford vs. Postal Tel. Cable Co., 11 R. R. & Corporation Law Jur., p. 54.

In order to aid the Court in the consideration of this case, an analysis of the many points arising will follow.

The questions that arise under the U. S. Constitution, and the laws of Congress in this case, are:

I.

That this tax or claim is a restraint upon the instruments of inter-state commerce and communication, which is placed solely in in the hands of Congress by the Constitution.

See Art. I, § 8, Sub. 3 and 18, U. S. Const.

II.

That this tax or claim is a restriction upon the use of the U. S. post roads.

See Art. 1, § 8, Sub. 7 U. S. Const.

Laws of Congress relating to telegraph companies, and the post-office service.

U. S. R. S. Title 65, §§ 5263 to 5268.

City streets, &c., are declared to be post roads of the U. S., in U. S. R. S. § 3964.

All highways are declared to be post roads of U. S., by 23 U. S. laws, 1884, Chap. 9, p. 3.

In W. U. Tel. Co. vs. Massachusetts, 125 U. S., p. 530–554. Mr. Justice Miller said in regard to the effect of § 5263 of the U. S. R. S., "If the Congress of the U. S. had authority to say that the (telegraph) company might construct and operate any of its tele-

graph over these lines (on the U. S. post roads,) as we have repeatedly held it had, the State can have no authority to say it shall not be done."

In W. U. Telegraph Co. vs. Mass., 125 U. S., 530-548, Mr. Justice Miller said: "While the State could not interfere by any specific statute, to prevent a corporation from placing its lines along any of these post roads, or stop the use of them after they were placed there, nevertheless the company receiving the benefit of the laws of the State for the protection of its property and its rights, is liable to be taxed upon its real or personal *property* as any other person would be."

III.

That this tax or claim is a restriction upon an agent of the national government without authority of Congress.

See U. S. Const, Art, 1, § 8, Sub. 18.

In regard to a license tax the Court said: "Undoubtedly the States may tax every subject of value within the sovereignty of the State belonging to the citizen as mere private property, but the power of taxation does not extend to the instrument of the federal government, nor to the constitutional means employed by Congress to carry into execution the powers conferred in the Federal Constitution." Clifford J. Ward vs. Maryland, 12 Wallace, p. 427. See Tel. Co. vs. Texas 105 U. S., 460.

IV.

This license exaction is an abridgment of the rights, immunities and franchises of the Postal Telegraph Cable Co.'s charter in the free use of the post roads of the United States, and of the State of South Carolina, under the laws thereof, in violation of the laws of Congress, and of the 14th Amendment of the United States Constitution and U. S. R. S., § 1977.

In Pambina Mining Co. vs. Penn., 125 U. S., p. 181-190, the Court held that a corporation is a person within the meaning of 14th Amendment, and said: "That the limit upon the power of the State to exclude a foreign corporation from doing business within its limits, and of having offices for that purpose, or to *exact conditions* for allowing the corporation to do business or hire offices there, arises where the corporation is in the employ of the Federal Government, or where its business is strictly inter-state or foreign commerce."

"The control of such commerce being in the Federal Government is not to be restricted by State authority."

"A burden imposed upon inter-state commerce is not to be sustained simply because the statute imposing it applies alike to the people of all the States, including the people of the State enacting it."

Minnesota vs. Barber, 136 U. S., 313.

Inter-state commerce cannot be taxed at all by a State, even though the same amount of tax should be laid on domestic commerce, or that which is carried on solely within the State.

Head note Robbins vs. Shelby Co., Tax Dist., 120 U. S., p. 489.

See cases cited in opinion of Mr. Justice Bradley.

In Norfolk & W. R. R. vs. Penn., 136 U. S., 114–118, Mr. Justice Lamar said: "It is well settled by numerous decisions of this Court that a State cannot, under the guise of a license tax, exclude from its jurisdiction a foreign corporation engaged in inter-state commerce, or impose any burdens upon such commerce within its limits."

"A telegraph company occupies the same relation to commerce as a carrier of messages that a railroad company does as a carrier of goods."

Tel. Co. vs. Texas, 105 U. S., 460–465, approved in Wabash & R. R. Co., vs. Ill., 118 U. S., p. 558.

In the latter case the decision of the Supreme Court of the State of Illinois was overruled on the construction of the Constitution and laws of Illinois.

V.

In Robbins vs. Shelly Tax Dist., 120 U. S., p. 492, Mr. Justice Bradley said: "Where the power of Congress to regulate is exclusive, the failure of Congress to make express regulations, indicates its will that the subject shall be left free from restrictions or impositions." See cases there cited.

In Crutcher vs. Kentucky, 141 U. S., p. 47–62, Mr. Justice Bradley said: "The decisions to which we have already referred are clear to the effect that neither licenses or *indirect taxation of any kind nor any system of State regulation*, can be imposed upon inter-state any more than upon foreign commerce."

In Lyng vs. Michigan, 135 U. S., p. 161–166, Chief Justice Fuller said: "We have repeatedly held that no State has the right to lay a tax on inter-state commerce in any form, whether by duties laid on

the transportation of the subjects of that commerce or on the receipts derived from that transportation, or on the occupation or business of carrying it on, for the reason that taxation is a burden on that commerce, and amounts to a regulation of it, which belongs solely to Congress."

VI.

The specific tax upon telegraph poles, as such, without regard to size, height or material of which it is composed, and physical condition and extent of business, is unequal. The Court will take judicial notice that all Telegraph Companies are not equal in extent, kind of property and amount of business, &c., yet the same amount of tax is imposed on each and every Telegraph Company by this ordinance.

"A system of taxation which imposes the same tax upon every species of property, *irrespective of its nature, or condition, or class*, will be destructive of the principal of uniformity and equality in taxation, and of a just adaptation of property to its burdens."

Pacific Express Co. vs. Seibert, 142 U. S., 339.

If a tax is a burden upon some persons and not upon others, under the same circumstances and conditions, it is then a violation of the fourteenth amendment.

Pacific Express Co. vs. Seibert, 142 U. S., p. 346.
See also U. S. R. S., § 1977.

In the case of Pickard vs. Pullman S. Car Co., 117 U. S., p. 38–51, which was the validity of a specific annual license charge on each car by a statute of Tennessee, the question involved was first brought before the Court of Chancery of Tennessee, on the same facts, for the license tax of 1877, between the same parties. It was held valid and the judgment was affirmed by the Supreme Court of Tennessee. The same claim for subsequent years was made in this suit. In the opinion by Mr. Justice Blatchford, he said: "We have given to the views set forth by the Tennessee Chancery Court the consideration due to the judgments of that tribunal, but are unable to concur in its conclusion," and the license charges claimed for cars that were engaged in inter-state transportation was held to be void. See Tennessee vs. Pullman S. Car Co., Ib., p. 51, argued with the above case.
Also Harman vs. Chicago, 147 U. S., p. 396.

A State law imposing a tax or license charge upon each locomotive, passenger and freight car, &c., being not merely a police regulation, but an expedient for raising revenue, involves a tax upon the passengers and freight transported, and is unconstitutional as in-

terfering with commerce between the States, where the cars, &c., run into another State.

Minot vs. P., W. & B. R. R. Co., 2 Abb., U. S. Reports, 323.
Pickard vs. Pullman S. Car Co., 117, U. S., p. 38 and Ib., p. 51.

State v. R.R. Corp 4 So. Ca. 376

VII.

That this specific tax or license claim upon the property of defendants ignores the laws and Constitution of South Carolina in assessment or taxation, for they require that all taxes upon property shall be according to value, and therefore this tax or claim is unequal and deprives the defendants of the equal protection of the laws in regard to assessment and taxation of property, which persons and other like corporations enjoy. (See former point.)

Pacific Exp. Co. vs. Seibert, 142, U. S., 339.

VIII.

This tax or claim, and the manner of creating it, or any statute similar to it, is against the public policy of the United States.

If the City of Charleston can do this, every other city and borough and municipality can impose a like tax or charge without limit as to amount, and any State can make laws of like nature and effect without any restraint, and would vie with each other to see who could get most revenue in that manner.

If several of the large cities of the United States should each impose and enforce the same amount of charge or tax upon telegraph property within its limits, telegraphic communication and property would be instantly destroyed throughout the United States.

Can one or more cities do it and not another, or one or more States do it without the consent or authority of Congress?

Although the question may not be one of degree the *power* to do it must be judged by the effect of the extreme degree.

"The power to tax is the power to destroy," has become a legal maxim.

In Welton vs. State of Missouri, 91 U. S., p. 275, Mr. Justice Field, delivering the opinion of the U. S. Supreme Court, said:

"The *power* of the State to exact a license tax of *any amount* being admitted, no authority would remain in the United States or in this Court to control its action, however unreasonable or oppressive. Imposts operating as an absolute exclusion of the goods would be possible, and all the evils of discriminating State legislation favor-

able to the interests of one State and injurious to the interests of other States and countries, which existed previous to the adoption of the Constitution, might follow, and the experience of the last fifteen years shows would follow from the action of some of the States." The Court also approved of the case of Brown vs. Maryland, 12 Wheaton, p. 446, and the able opinion of Chief Justice Marshall therein.

The power to tax this property in this manner necessarily challenges the right to exclude it altogether, and thus to thwart the policy of the other States in the Union. See Passenger Cases, 7 Howard, U. S., p. 463.

Chief Justice Marshall said in McCulloch vs. Maryland, 4 Wheaton U. S., p. 431: "The power to tax involves the power to destroy, the power to destroy may defeat and render useless the power to create." Again, "In the Legislature of the Union alone are all represented. The Legislature of the Union alone, therefore, can be trusted by the people with the power of controlling measures which concern all in the confidence that it will not be abused."

* * * * * * *

"The American people have declared their Constitution and the laws made in pursuance thereof to be supreme, but this principle (the State right to tax) would transfer the supremacy, in fact to the States. If the States may tax one instrument employed by the Government in the execution of its powers, they may tax any and every other instrument. They may tax the mail; they may tax the mint; they may tax patent rights; they may tax the papers of the Custom House; they may tax judicial process; they may tax all the means employed by the Government, to an excess which would defeat all the ends of Government."

* * * * * * *

"The question is, in truth, a question of supremacy, and if the rights of the States to tax the means employed by the general government be conceded, the declaration that the Constitution and laws made in pursuance thereof shall be the supreme law of the land, is empty and unmeaning declamation."

"The States have no power by *taxation* or *otherwise* to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by Congress, to carry into execution the powers vested in the general government." p. 435.

"Congress has regulated commerce by willing it shall be free, and it is therefore not left to the discretion of each State either to re-

fuse a right of passage through her territory, or to exact a duty for permission to exercise such a privilege." Grier, J., in the "Passenger Case," 7 Howard, U. S., 463, approved in Ward vs. Maryland, 12 Wallace, 432.

The entire populace has an interest in the determination of this case. If this kind of tax can be enforced, in addition to other taxation, telegraph rates may be doubled, or increased, or the capital in the telegraph business will be employed at a loss.

IX.

An injunction is the proper remedy to prevent the collection of the illegal license tax and penalty in this case.

Ratterman vs. W. U. Tel. Co., 127 U. S., p. 411.
Allen vs. B. and O. R. R. Co., 114 U. S., p. 311.

R. S. GUERNSEY,
J. M. MORDECAI & GARDEN,
For Appellant.

January 8th, 1894.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

CASE NO. 15,393. TERM NO. 1009.

THE POSTAL TELEGRAPH CABLE COMPANY, APPELLANT,

vs.

THE CITY COUNCIL OF CHARLESTON *ET AL.*, APPELLEES.

POINTS AND AUTHORITIES FOR THE CITY COUNCIL OF CHARLESTON, DEFENDANT, APPELLEE.

STATEMENT.

The plaintiff in error is a corporation organized under the laws of the State of New York, which has an office in the City of Charleston, S. C., and is engaged in sending messages by wire to all points in the State, as well as to points outside of the State. Its business is therefore partly inter-state commerce business, besides which it has its lines over the post roads, highways and railroads in the City of Charleston and State of South Carolina, and other States of the United States, and has accepted the provisions of the Act of Congress, July 24, 1866 (Title 65, Rev. Stat. U. S.), thereby becoming a Governmental agency.

The City Council of Charleston, a municipal corporation of South Carolina, pursuant to legislative authority, for the purpose of raising revenue, passed an ordinance to regulate business for the year 1892. By this ordinance all business of the kinds set forth therein, are required to pay a license tax. The clause of the ordinance referring to Telegraph Companies is as follows: 1

"35. Telegraph Companies or agencies, each, for business done "exclusively within the City of Charleston, and not including any "business done to or from points without the State, and not in- "cluding any business done for the Government of the United "States, its officers or agents, $500.00."

Plaintiff in error having failed to pay this tax, the same was assessed with penalty, as provided in the ordinance, and an execution for the collection thereof was issued to the City Sheriff. The plaintiff filed its bill to enjoin this execution, alleging that the license tax was unconstitutional, illegal and void; that its enforcement would interfere with and destroy plaintiff's business, and render it incapable of performing its functions as an agent of the Government, or of carrying on its inter-state commerce business. A temporary injunction was granted. When the case was heard on its merits, the Circuit Judge made an order dissolving the injunction and dismissing the bill with costs.

The present appeal is from this decree, and is based upon thirteen grounds. (Record folio, 69 to 73.) It is unnecessary to set out or argue these exceptions separately. The Circuit Judge most admirably summarizes plaintiff's position as follows: That "this license and penalty is illegal and void; that the mode of enforcing the demand will interfere with and destroy the business of the Company, rendering it incapable of performing its functions as an agent of the Government or as an instrument of inter-state commerce."

Plaintiff contends that the license ordinance is violative of Title 65 of the Rev. Stat., Sec. 8, Art. 1, and Sec. 1 of 14th Amendment of the Constitution of the United States, and sundry sections of the Constitution of South Carolina.

ARGUMENT.

2 So far as the legality, under the Constitution of South Carolina, of the license tax is concerned, we submit that the question is absolutely *res adjudicata*. In a series of cases, beginning with the State vs. Hayne, 4 S. C., 413, and ending with Information vs. Jager, 29 S. C., 438, the Constitutionality of the license tax has been been affirmed by the Supreme Court of South Carolina. A part of the syllabus of the Jager case is as follows: "It has been judicially settled in this State that the power to raise revenue by a license tax on business, given by Statute to the City Council of Charleston, does not violate any provision of our State Constitution," and the Court in that case says: "We cannot reopen the argument." 29 S. C., 443 and 444.

The Circuit decree, and the authorities there cited, (Brief, folio 60 to 66), so completely covers the case that it would seem almost unnecessary to say more. We adopt it as our argument.

It is needless to cite authorities for the following propositions, which we respectfully submit:

1. That it is the paramount duty of the citizen to pay his taxes, and thus to contribute to the support of the government under which he lives.

2. That licenses to carry on business, trades or occupations, issued by municipal corporations, pursuant to Legislative authority, are taxes, quite as much as are taxes on property.

3. That municipal license ordinances, enacted pursuant to authority conferred by the Legislature, have the same force and effect as if enacted by the Legislature itself.

4. That the presumption is always in favor of the Constitutionality of a law.

The appeal in this case is rested practically upon the claim that the license ordinance of the City of Charleston for the year 1892, (Record, folio 19 to folio 33), so far as plaintiffs in error are concerned, is *ultra vires* and unconstitutional, because 3

FIRST,

~~Because they say~~ It is an interference with inter-state commerce, and

SECOND,

That their acceptance of the Act of July, 1866, title 65, Revs. Stat. U. S., constitutes them a government agency, and thereby exempts them from State and city taxation—or at least, that it exempts them from license taxes as a pre-requisite to doing business. That to charge them with such license tax before they can do business is to hinder or prevent them from performing their office as a governmental agency.

AS TO THE FIRST GROUND.

The words of the ordinance, as cited in the complaint, are: "Telegraph Companies or agencies each for business done exclu- "sively within the city of Charleston, and not including any business "done to or from points without the State, and not including any "business done for the government of the United States, its officers "or agents, five hundred dollars."

The counsel for appellant, in his argument in a case between these same parties, before Judge Izlar in the State Court with reference to the license tax for 1890 imposed by appellee on telegraph companies, said, (I quote his words:)

"Had this tax by way of license specified that it was for carrying "on the business of a telegraph company in the city of Charleston, "based upon messages received by it, at its office in the city of "Charleston, and sent therefrom to and from all other points within "the State of South Carolina, and excluding from its operation,

" government business, then it might be considered in consonance
" with the LeLoup decision, but it is not in this shape, as we have
" already shown, and it is in violation of the Act of Congress, because
4 " it does not except government business."

A glance at the words of the ordinance quoted above, show that it expressly excluded all inter-state commerce business, all government business, and is absolutely confined to the business done within the city of Charleston, which business is based upon messages received by it at its office in the city of Charleston, and sent therefrom to and from all other points within the State of South Carolina. According, therefore, to appellant's counsel, this ordinance is constitutional, and in consonance with the LeLoup decision in 127 U. S. It certainly cannot be objected to upon the ground that it taxes inter-state business. We therefore pass to the

SECOND PROPOSITION.

That because of its being a governmental agency under Act 1866, it cannot be taxed.

In R. R. Co. vs. Pennington, 18 Wall., 5, the question of the taxation of agencies of the government, and all the cases on the subject were fully considered, and the Court holds: "It may, " therefore, be considered as settled, that no constitutional implica- " tions prohibits a State tax upon the property of an agent of the " government merely because it is the property of such an agent." Page 33.

This doctrine has never been reversed or modified, and is as good law to-day at it ever was.

In commenting upon the above case, (R. R. Co. vs. Pennington, 18 Wall, 5,) Mr. Mordecai, before Judge Izlar, attempted to draw a distinction between taxation by the State of *property* and taxation of *business* or occupation.

To sustain this distinction, he quotes from page 36 of the decsion, the following:

5 18 Wall., p. 36: "It is, therefore, manifest, that exemption of " Federal agencies from State taxation is dependent, not upon the " nature of the agents, but upon the mode of their constitution, or " upon the fact that they are agents, but upon the effect of the tax; " that is, upon whether the tax does in truth deprive them of power " to serve the government as they were intended to serve it, or does " it hinder the effective exercise of their power. A tax upon their " property has no such necessary effect. It leaves them free to dis- " charge the duties they have undertaken to perform. A tax upon " their operations," (what operations? necessarily, their operations " as agents of the government,) is a direct obstruction to the exercise " of Federal powers."

Of course, we concede that the city cannot tax either the business done for the government, or inter-state business of this Company; the ordinance itself excludes these, and the expression of the Court, "A tax upon their operations," means their governmental or inter-state operations.

That this is so, is shown beyond peradventure by the Court in the opening of the decision at page 29, as follows, 18 Wall., p. 29: "As was said in Lane County vs. Oregon, (7 Wall., 77:) In respect "to *property*, *business* and *persons* within their respective limits, the "power of taxation of the States remained, and remains entire, not-"withstanding the Constitution."

The power to tax *business* and *persons* is classed along and co-equal with the power to tax *property*. Why should they not be? It is conceded by the plaintiffs that the State can tax their property. They pay the tax upon their property. What is their property? Their poles, wires, batteries, etc. If the State has the right to tax these things, it must have the right to enforce the tax. Suppose the Company fails to pay this property tax, and the poles, wires, batteries, etc., are levied on by the State, would that be a less hindrance 6
to their government agency business, than a levy on their bank account, or even on their same property for the tax on business which was not governmental? Manifestly not, the distinction which plaintiffs attempt to draw is a distinction without a difference.

These principles are sustained and clearly stated in case of Telegraph Co. vs. Texas, 105, U. S. 460. The syllabus of the case is as follows:

105 U. S. p. 460. 1. "*In respect to foreign and inter-state business*, a "telegraph company is, as an instrument of commerce, subject to the "regulating power of Congress, and, if it accepts the provisions of "Title 65 of the Revised Statutes, it becomes an agent of the United "States, *so far as the business of the Government is concerned.*"

2. "Where it has accepted those provisions, State laws, so far as "they impose upon it a specific tax on each message which it trans-"mits beyond the State, or which an officer of the U. S. sends over "its lines on public business, are unconstitutional."

The Texas law was a tax upon every message sent, whether beyond the State or not, or whether for the Government or not.

In delivering the opinion of the Court, Chief Justice Waite at page 464 says:

105, U. S., p. 464. "The Western Union Tel. Co., having accepted "the restrictions and obligations of this provision by Congress, occu-"pies in Texas the position of an instrument of foreign and internal "state commerce and of a government agent for the trans-"mission of messages on public business. *Its property in the State* "*is subject to taxation the same as other property and it may undoubt-*

"edly be taxed in a proper way on account of its occupation and its bus-"iness."

The conclusion of the Court at page 466 is thus stated :

7 105, U. S., p. 466. "It follows that the judgment, so far as it in-"cludes the tax on messages sent out of the State, or for the gov-"ernment on public business, is erroneous. The rule, that the regu-"lation of commerce which is confined exclusively within the juris-"diction and territory of a State, and does not affect other nations "or States or the Indian tribes; that is to say, the purely internal "commerce of a State, belongs exclusively *to* the State, *is as well "settled* as that the regulation of commerce which does affect other "nations or States or Indian tribes, belongs to Congress. *Any tax, "therefore, which the State may put on messages sent by private parties, "and not by the agents of the Government of the United States, from "one place to another, exclusively within its own jurisdiction, will not be "repugnant to the Constitution of the United States.* Whether that "law of Texas, in its present form, can be used to enforce the collec-"tion of such a tax, is a question entirely within the jurisdiction of "the Courts of the State, and as to which we have no power of re-"view."

The license ordinance in question, tested by Chief Justice Waite's definition and by this case, is therefore constitutional, and I might rest the argument here.

But there is more. The above cited Texas case, in 105 U. S., was distinctly reaffirmed by the later case of Ratterman vs. Western Union Tel. Co., 127 U. S., p. 411. The syllabus is as follows:

127 U. S., 411: "A single tax, assessed under the laws of a State " upon receipts of a telegraph company, which were partly derived " from inter-state commerce and partly from commerce within the " State, and which were capable of separation, but *were returned and " assessed in gross*, and without separation or apportionment, is *invalid " in proportion to the extent that such receipts were derived from inter-" state commerce, but is otherwise valid*, and while a Circuit Court of
8 " the United States should enjoin the collection of the tax upon the " portion of the receipts derived from inter-state commerce, *it should " not* interfere with those derived from commerce entirely within the " State."

In this case Justice Miller delivers the opinion, cites the Texas case, 105 U. S., quoting from it as we have done, and concludes in the words as stated in the syllabus.

And so it is decided in LeLoup vs. Port of Mobile, 127 U. S., p. 640. That was a case arising under a license ordinance of the City of Mobile. The words of the ordinance are : "On telegraph companies, $225." No exception made for inter-state or government business. The Court said, page 647 : " But it is urged that a portion of the telegraph " company's business is internal to the State of Alabama, and therefore

" taxable by the State. But that fact does not remove the difficulty. " The tax affects the whole business *without discrimination. There* " *are sufficient modes in which the internal business, if not already taxed* " *in some other way, may be subjected to taxation without the imposition* " *of a tax which covers the entire operations of a Company.*"

The conclusion of the Court in this case is as follows, page 648: " In our opinion such a construction of the Constitution leads to the " conclusion that no State has the right to lay a tax *on inter-state* " *commerce* in any form, whether by way of duties laid on the trans- " portation of the subjects *of that commerce*, or on the receipts *de-* " *rived from that transportation*, or on the *occupation or business of* " *carrying it on*, and amounts to a regulation of it, which belongs " solely to Congress." Many cases supporting this conclusion, (which we have not for a moment disputed) are cited, and the opinion concludes,

" We may here repeat, what we have so often said before, *that this* " *exemption of inter-state and foreign commerce from State regulation* " *does not prevent the State from taxing the property* of those engaged 9 " in such commerce located within the State as the property of other " citizens is taxed, *nor from regulating matters of local concern*, (*i. e.*, " tax on local business), which may incidentally affect commerce, " such as wharfage, pilotage, and the like. We have recently had " before us the question of taxing a telegraph company in the case of " Western Union Tel. Co. vs. Mass., 125 U. S., 530."

" In the Massachusetts case just referred to (125 U. S., 530) the " Court held that 'The privilege conferred on telegraph companies " by Rev. Stats., Sec. 5263 (Title 65), *carries with it no exemption* " from the ordinary burdens of taxation in a State, within which they " may own or operate lines of telegraph.' "

Counsel for appellant, in a former argument on these questions, cited and relied upon the case of Pensacola Tel. Co. vs. Western U. Tel. Co., 96 U. S., page 1. We submit that that case has no bearing upon the question at issue. There, the State of Florida attempted to give to the Pensacola Co. a monopoly, and to exclude the Western Union Co. from the State, or that portion so given to the Pensacola Co. The Court held that this could not be done. That is all there is in that case.

We submit that the authorities cited by us clearly and positively settle, that while a State or a municipal corporation, acting pursuant to statutory authority, may not tax a franchise conferred by the Government of the U. S., or tax inter-state commerce, or Governmental business performed by a Telegraph Co., which has accepted the provisions of Title 65 of the Revised Statutes, it *can* lawfully tax the property of such company, located within its borders, or its business

transacted for private persons exclusively within its own jurisdiction.

This exact question has been decided, as late as December 15, 1892, by the Supreme Court of Alabama, in the case of Moore vs. the
10 City of Eufaula, reported 39 Am. and Eng. Corp. cases, p. 610. This case is so exactly in point that I quote the opinion entire:

"Coleman, J.—Appellant, Moore, was fined for a violation of an "ordinance of the City of Eufaula, which required of 'each and every "person or company engaging in the business of sending and re- "ceiving telegraph messages to and from points within the State of "Alabama, and keeping an office or place of business in the City of "Eufaula, to pay a license tax,' etc. The plea of the defendant to the "complaint is substantially the same as that pleaded by the defend- "ant in the case of LeLoup vs. the port of Mobile, 127 U. S., 640, 21 "Am. and Eng., Corp. Cases 26; and it is insisted that the principle "of law declared in that case is applicable to the present case, and is "conclusive against the validity of the ordinance for a violation of "which the defendant was prosecuted.

"We are of opinion that the ordinance under which the prosecu- "tion in the former case was had is essentially different from that to "be considered in the case at bar in its application to the facts. "Congress has exclusive power in all matters of inter-state commerce, "and the authority of the States, in all matters of commerce purely "domestic, is equally sovereign and exclusive."

"Communication by telegraph is commerce, and, when carried on "with foreign nations, and among the several States, and with the "Indian tribes, Congress alone has power to regulate it. The prin- "ciple of exclusive authority of Congress to regulate commerce has "been extended until it is made to apply to all connecting lines used "for the transmission of communication from one State to another, "although such connecting lines may lie wholly within a single State. "Congress also has exclusive power to establish postoffices and post "roads. Any law of a State which obstructs or burdens inter-state "commerce, or hinders the regular or legal administration of the
11 "general government, must be held to be unconstitutional and void. "The power of the State over its internal affairs is subject to no "limitation outside of the Constitution of the United States. The "Western Union Telegraph Company, incorporated by the State of "New York, can derive no power from its creator to do business "within the jurisdiction of the State of Alabama. Considered purely "as a foreign corporate body, deriving its powers from a charter "granted by the State of New York, the State of Alabama has the "power to prescribe police regulations for its government within its "boundaries, and to tax its property situated here for the purposes of "revenue, having due regard that no unjust discrimination is made. "The complaint avers that the defendant, 'as managing agent of "'the Western Union Telegraph Company, a corporation having a "'place of business in the city of Eufaula, did then and there, as "'such agent, engage in the business and occupation of transmitting

" ' telegrams from and to points within the State of Alabama, and
" ' between the private individuals of the State of Alabama and
" ' others within said State,' etc. The gist of the defence set up in
" the plea to the charge, in effect asserts the proposition that, in as-
" much as the telegraph company has accepted the benefit of the
" Act of Congress set out in the plea, and subjected itself to
" its conditions, and may, therefore, be used by the government for
" the administration of public affairs, or inasmuch by its various
" connections with lines in other States, it may be used for the pur-
" poses of inter-state commerce; therefore, the Telegraph com-
" pany, though a foreign coporation, has the right in violation of the
" State laws, to engage in other matters and business wholly inde-
" pendent of and disconnected from governmental administration and
" inter-state commerce

" The boundary line of the power granted to Congress by the
" Constitution ' to regulate commerce between the States,' has not
" been clearly and definitely located by the decisions of the Su- 12
" preme Court of the United States. Whether, eventually, this
" clause of the Constitution or some other will be extended by
" judicial interpretation until the autonomy of the States and the
" doctrine of State sovereignty shall be known only as a part of the
" past history of our country, presents questions of great solicitude
" to those who love and glory in the general government as origi-
" nally designed and established. We believe, however, that as
" yet no decision has gone to the extent of granting immunity
" even to the officers of the government, who are guilty of violat-
" ing police regulations of a State which in no way militate against
" the performance of official duty required by the general govern-
" ment. Much less can one claim immunity who was not an em-
" ployee of the government, and who was not engaged in official
" duty at the time of the breach of its laws of which the State
" complains. The ordinance of the city of Eufaula can be enforced
" without interfering with inter-state commerce, or the rights of
" the general government, secured to it under the Act of Congress,
" set up in the plea of the defendant. The State of Alabama, by
" virtue of its sovereign power, had authority to grant to the city
" of Eufula the power to adopt the ordinance.

" The plea filed does not meet the issue presented by the com-
" plaint. To present a defence, it should aver facts to show that
" the messages transmitted were in the interest of inter-state com-
" merce, or in obedience to governmental orders, and that the office
" or place of business in the city of Eufaula was kept and used for
" these purposes only.

" The fact that the Western Union Telegraph Company may keep
" an office and engage in business in the city of Eufaula over which
" the State has no police control does not justify it in using the office
" for other purposes, and engaging in other business, subject to 13
" State regulation, and for the doing of which the State requires that
" a license shall be first taken out. If the defendant had been
" charged with retailing without a license and contrary to law, the
" plea would be equally available as a defence as it is to the charge
" that the defendant engaged in the business of transmitting mes-

"sages from and to points within the State, and from and to pri-
"vate individuals of the State."

"We feel fully sustained in our views by the line of argument and "conclusions reached in the following cases:

"W. U. T. Co. vs. State, 105 U. S., 460-466.
"Ficklen vs. Taxing Dist., 145 U. S. 6.
"State vs. Grand Trunk R. Co., 142 U. S., 217.

"There was no error in sustaining the demurrer to the plea of the defendant. Affirmed."

Finally.

We submit that the cases cited by the Circuit Judge,

Home Insurance Company vs. the City Council, 93 U.S., 122.
Wiggins Ferry Co. vs. East St. Louis, 107 U. S., 376.

are on all forms with the case at bar and absolutely decide it. They are so clearly stated in the Circuit Decree that we need only refer to the Record, page 38. Folios 63 and 64.

A Word as to the Facts.

The Answer denies any levy, or intention to levy, on the poles, wires, batteries, &c. It is premature to enjoin that which has neither been done or contemplated to be done. We are, however, unable to see how a levy on these poles, etc., for a property or income tax would interfere with the Governmental and Inter-State Commerce business, less than would a levy for a license tax. They concede the legality of the property tax and therefore necessarily concede to
14 the taxing power, the means of its enforcement. If the license tax be constitutional the same means must exist for its enforcement.

Exclusive Business in Charleston.

Complainants claim that they do no business as alleged in the ordinance, "exclusively within the City of Charleston."

Their manager and all of their employees do their work exclusively in Charleston. Their contract with a Charleston merchant to send a dispatch to his correspondent in Columbia is exclusively made and paid for in Charleston. A dispatch from Columbia to a person in Charleston is received here by complainant, is delivered here and if not prepaid, is paid for in Charleston. In all these cases there is business done exclusively in Charleston by the telegraph company. The contract in Charleston to send the message is an exclusive, complete piece of business. The receiving the message in Charleston is a complete piece of business. The delivering the message in Charleston is a complete piece of business. See also the Circuit Decree on this point. Record, p. 39, folio 65.

The ordinance only provides for business in Charleston. We have nothing to do with business done elsewhere, nor is it our concern as to what taxes are charged elsewhere on business done there. A merchant having a store in Charleston and a store in Columbia might just as well claim exemption from taxes in Charleston because he pays taxes in Columbia on his business done there. Somewhat analagous is the case of the resident drummer. It was claimed that he came within the inter-state commerce protection as announced in the drummers' tax case. (Robbins vs. Shelby Co., 120, U. S. 489.) But in Ficklen vs. Shelby County, 145, U. S. page 1, the Supreme Court held otherwise and made him both the license tax and the ad valorem tax.

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